

SALES TERMS AND CONDITIONS

1. Applicability. (a) These terms and conditions of sale (these “**Terms**”) are the only terms which govern the sale of the goods (“**Goods**”) by DiaPharma Group, Inc. (“**DiaPharma**”) to the party identified on the quotation/invoice from DiaPharma as purchaser/buyer (“**Buyer**”). Notwithstanding anything herein to the contrary, if a separate written contract signed by both parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms. THE TERMS AND CONDITIONS SET FORTH BELOW CONSTITUTE ALL THE TERMS OF THIS AGREEMENT AND A COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN BUYER AND DIAPHARMA. ALL REPRESENTATIONS, PROMISES, WARRANTIES OR STATEMENTS BY ANY AGENT OR EMPLOYEE OF SELLER THAT DIFFER IN ANY WAY FROM THE TERMS AND CONDITIONS HEREOF SHALL HAVE NO EFFECT.

(b) The accompanying quotation/invoice (the “**Sales Confirmation**” and these Terms (collectively, this “**Agreement**”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer’s general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer’s order does not constitute acceptance of any of Buyer’s terms and conditions and does not serve to modify or amend these Terms.

2. Delivery. (a) The Goods will be delivered within a reasonable time after the receipt of Buyer’s purchase order or as otherwise specified in writing by DiaPharma and Buyer. DiaPharma shall not be liable for any delays, loss or damage in transit. All estimates of delivery time are approximate, and failure to effect shipment of an accepted order by such estimated delivery date will not be considered sufficient cause of cancellation without prior agreement confirmed in writing by our authorized agent. Any special order Goods ordered by Buyer will be delivered after receipt by DiaPharma, and DiaPharma cannot provide any specified delivery time for special order Goods.

(b) Unless otherwise agreed in writing by the parties, DiaPharma shall deliver the Goods to DiaPharma’s location of 8948 Beckett Road, West Chester Township, Ohio 45069 (the “**Delivery Point**”) using DiaPharma’s standard methods for packaging and shipping such Goods.

(c) DiaPharma may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer’s purchase order. Any liability of DiaPharma for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

3. Quantity. If DiaPharma delivers to Buyer a quantity of Goods of up to 80% more or less than the quantity set forth in the Sales Confirmation, Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods the price set forth in the Sales Confirmation adjusted pro rata.

4. Shipping Terms. Delivery shall be made FOB Delivery Point. DiaPharma shall use Buyer’s freight forwarder for shipping. Buyer shall provide DiaPharma Buyer’s freight forwarder and

billing information with charges billed directly to Buyer by Buyer's selected carrier. If Buyer fails to provide such carrier information, DiaPharma will select the carrier and Buyer will be charged DiaPharma's freight charge estimates at the time of shipment from the Delivery Point.

5. Title and Risk of Loss. Title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to DiaPharma a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Ohio Uniform Commercial Code.

6. Amendment and Modification. These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party.

7. Inspection and Rejection of Nonconforming Goods. (a) Buyer shall inspect the Goods within three (3) days of receipt ("**Inspection Period**"). Buyer will be deemed to have accepted the Goods unless it notifies DiaPharma in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by DiaPharma. "**Nonconforming Goods**" means only the following: (i) product shipped is different than identified in Buyer's purchase order; or (ii) product's label or packaging incorrectly identifies its contents.

(b) If Buyer timely notifies DiaPharma of any Nonconforming Goods, DiaPharma shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to the Delivery Point in compliance with DiaPharma's shipping terms, including packaging, handling and temperature requirements and other stated requirements of DiaPharma. If DiaPharma exercises its option to replace Nonconforming Goods, DiaPharma shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the Delivery Point.

(c) Buyer acknowledges and agrees that the remedies set forth in Section 7(b) are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 7(b), all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to DiaPharma.

8. Price. (a) Buyer shall purchase the Goods from DiaPharma at the prices (the "**Prices**") set forth in DiaPharma's quotation or on the accepted purchase order of Buyer by DiaPharma.

(b) All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, DiaPharma's income, revenues, and gross receipts.

9. Payment Terms. (a) Buyer shall pay all invoiced amounts due to DiaPharma within thirty (30) days from the date of DiaPharma's invoice. Buyer shall make all payments hereunder by wire transfer or other payment method mutually agreed and in US dollars.

(b) Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse DiaPharma for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which DiaPharma does not waive by the exercise of any rights hereunder), DiaPharma shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder and such failure continues for ten (10) days following written notice thereof.

(c) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with DiaPharma, whether relating to DiaPharma's breach, bankruptcy or otherwise.

10. Limited Warranty. (a) DiaPharma warrants to Buyer that for a period of one (1) year, or to the expiry date as applicable from the Product's manufacturer's warranty, whichever period is shorter, from the date of shipment of the Goods ("**Warranty Period**"), that such Goods materially conform to the specifications set forth in DiaPharma's published specifications/Product package inserts in effect as of the date of manufacture and will be free from material defects in material and workmanship.

(b) EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 10(a), DIAPHARMA MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

(c) DiaPharma shall not be liable for a breach of the warranty set forth in Section 10 unless: (i) Buyer gives written notice of the defect, reasonably described, to DiaPharma within three (3) days of the time when Buyer discovers or ought to have discovered the defect; (ii) DiaPharma is given a reasonable opportunity after receiving the notice to examine such Goods and Buyer (if requested to do so by DiaPharma) returns such Goods to DiaPharma's place of business at DiaPharma's cost for the examination to take place there; and (iii) DiaPharma reasonably verifies Buyer's claim that the Goods are defective.

(d) DiaPharma shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective portion) or (ii) credit or refund the price of such Goods at the pro rata contract rate provided that, if DiaPharma so requests, Buyer shall, at DiaPharma's expense, return such Goods to DiaPharma.

(e) THE REMEDIES SET FORTH IN SECTION 10(d) SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND DIAPHARMA'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 10.

11. Limitation of Liability. (a) IN NO EVENT SHALL DIAPHARMA BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING

OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT DIAPHARMA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(b) IN NO EVENT SHALL DIAPHARMA'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, EXCEED THE TOTAL OF THE AMOUNTS PAID TO DIAPHARMA FOR THE GOODS SOLD HEREUNDER.

12. Compliance with Law. Buyer shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. DiaPharma may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods.

13. Termination. In addition to any remedies that may be provided under these Terms, DiaPharma may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement and such failure continues for ten (10) days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

14. Waiver. No waiver by DiaPharma of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by DiaPharma. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

15. Confidential Information. All non-public, confidential or proprietary information of DiaPharma, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by DiaPharma to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by DiaPharma in writing. Upon DiaPharma's request, Buyer shall promptly return all documents and other materials received from DiaPharma. DiaPharma shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

16. Force Majeure. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or

performing any term of this Agreement (except for any obligations of Buyer to make payments to DiaPharma hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("**Impacted Party**") reasonable control, including, without limitation, the following force majeure events ("**Force Majeure Event(s)**"): (a) acts of God; (b) flood, fire, earthquake, other potential disasters or catastrophes, such as epidemics and pandemics, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) shortage of adequate power or transportation facilities; and (i) other similar events beyond the reasonable control of the Impacted Party. The Impacted Party shall give notice within two (2) days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of thirty (30) consecutive days following written notice given by it under this Section 16, either party may thereafter terminate this Agreement upon ten (10) days' written notice.

17. Intellectual Property. (a) DiaPharma and DiaPharma suppliers, as applicable, will remain the sole and exclusive owner of all intellectual property rights in and to each Goods and services made available to Buyer and any related specifications, instructions, documentation or other materials, including, but not limited to, all related copyrights, patents, and trademarks and other intellectual property rights. Buyer does not and will not have or acquire any ownership of these intellectual property rights in or to the Goods or services made available to Buyer, or of any intellectual property rights relating to those Goods or services. (b) Buyer shall not reverse engineer, duplicate, replicate, emulate, reverse assemble or other similar act of any Goods sold to Buyer. Buyer agrees not to develop, or assist others to develop, data or systems that delivers goods that are the same or are substantially similar to the Goods sold to Buyer.

18. Assignment. Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of DiaPharma. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

19. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

20. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

21. Governing Law. All matters arising out of or relating to this Agreement is governed by and construed in accordance with the internal laws of the State of Ohio without giving effect to any choice or conflict of law provision or rule (whether of the State of Ohio or any other jurisdiction)

that would cause the application of the laws of any jurisdiction other than those of the State of Ohio. The parties hereby further agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to the terms or sale of the Goods hereof and is expressly excluded hereunder.

22. Submission to Jurisdiction. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be exclusively instituted in the federal courts of the United States of America or the courts of the State of Ohio in each case located in the City of Cincinnati and County of Hamilton, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

23. Notices. All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a “**Notice**”) shall be in writing and addressed to the parties at the addresses set forth on the face of the Quotation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

24. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

25. Survival. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Compliance with Laws, Limited Warranty, Limitation of Liability, Confidential Information, Governing Law, Submission to Jurisdiction, and Survival.

10726745.2