



Terms & Conditions for Purchases On or After July 24, 2010

TERMS AND CONDITIONS

These terms and conditions shall apply to all purchases and sales of Products between Customer and Smith Medical Partners, LLC (SMP). Customer agrees that these terms and conditions may be modified at any time and from time to time by SMP, but no modification will apply to Customer retroactively. A current copy of these terms and conditions can be found at www.smpspecialty.com/termsandconditions.

PURCHASES

Customer will submit orders for pharmaceutical and other products (Products) to SMP, which orders are subject to acceptance by SMP. Customer agrees to pay for said Products ordered by Customer in accordance with these terms and conditions. SMP shall fulfill Products ordered by Customer and accepted by SMP (to the extent SMP has Products in inventory for allocation to Customer). Customer shall take title to Products at the time of delivery to Customer and shall be responsible for risk of loss to Products upon such delivery. Customer hereby agrees and understands that SMP may at any time and from time to time cancel all deliveries and suspend any orders (whether in route or otherwise) and reclaim any deliveries made if SMP determines in its sole discretion that the sale or delivery of any Products may be contrary to or violate any SMP policy, any law or any agreement with or request of any governmental authority or otherwise not be in the best interests of SMP. In the event that SMP in its sole discretion authorizes deliveries on such terms as it may determine in its sole discretion after any such cancellation, suspension or reclamation, such shall not constitute a waiver of this Section for any future enforcement purposes.

PRICING

Pricing for Products will equal the price set forth from time to time by SMP. SMP has no duty to pass through any rebate or discount to Customer.

SHIPPING

SMP ships Products free of charge within the United States with a \$500.00 minimum order. For orders less than \$500.00, a \$15.00 shipping and handling fee will be applied. Notwithstanding the foregoing (a) non-refrigerated items shipped for next-day delivery are subject to a \$30.00 shipping and handling fee, (b) all CLASS 2 narcotic orders will be charged a \$15.00 shipping and handling fee, and (c) all Saturday deliveries are charged a \$30.00 shipping and handling fee. For all shipments made outside of the 48 contiguous states there is a \$50.00 shipping charge.

PAYMENT TERMS

Statement Payment Program

15-Day: There will be two billing periods per month. The first period will be from the 1st through the 15th of the month, and payment for purchases during such period will be due by the 25th of that month. The second period will be from the 16th through the end of the month, and payment for purchases during such period will be due by the 10th of the following month.

30-Day: Payment for purchases from the 1st through the end of the month will be due end payable by the 10th of the following month.

Invoice Payment Program

15-Day: All invoices are due 15 days from the invoice billing date except for special dating offers authorized by SMP, which are due 15 days from the special billing date stated on the invoice.

30-Day: All invoices are due 30 days from the invoice billing date except for special dating offers authorized by SMP, which are due 30 days from the special billing date stated on the invoice.

*All checks should be made payable to H. D. Smith.

Remittance should be mailed to:

21950 Network Place, Chicago, IL 60673-1219.

Electronic Funds Transfer

Electronic Funds Transfer (EFT) is another payment option available through SMP. EFT requires an Authorization Agreement for Pre-Authorization Payment form which will give SMP authorization to automatically initiate debit entries for invoice amounts from checking account indicated on the form. Statements reflecting account activity will be mailed out semi-monthly or monthly.

Semi-Monthly EFT: Amount due will be drafted the 15th and 30th of the month. All purchases billed by H. D. Smith/SMP from the 1st through the 15th of the month are due and payable on the last day of the month via Electronic Funds Transfer. All purchases billed by H. D. Smith/SMP from the 16th through the end of the month are due and payable on the 15th day of the following month via Electronic Funds Transfer.

Monthly EFT: Amount due will be drafted on the 10th of each month. All purchases billed by H. D. Smith/SMP for the calendar month are due and payable on the 10th day of the following month via Electronic Funds Transfer.

Daily EFT: Amount due will be drafted within 24 hours after order is placed via Electronic Funds Transfer.

Accelerated Payment Incentives: Accelerated payment incentives are available for EFT or CheckFAXX payment terms. Amounts of incentives may vary relative to market conditions. Details and amounts of incentives are available upon request.

Past Due Balance: Without limiting other remedies available to SMP, past due invoices are subject to a 2% service charge per month and future shipments may be suspended until past due invoices are paid in full. Credit Card payments may be subject to a service fee based on order size and method of payment. Customer shall be responsible to pay any and all costs and expenses incurred by SMP (including, without limitation, reasonable attorneys' fees) in connection with collecting amounts due to SMP.

Price Changes: Due to manufacturer price increases, prices are subject to change without notice. SMP will attempt to notify Customer when possible.

CheckFAXX: To reduce processing & handling time, for one-time prepayment payment by check, or for repeat purchases of the **same dollar amounts**, SMP also accepts check-by-fax using the CHECKFAXX system. CHECKFAXX works by attaching a copy of the check and faxing to SMP. Funds are withdrawn by using the routing and account number on the check. A copy of the deposit slip will be mailed to the customer for their records. All checks should be made payable to H. D. Smith.

RETURN POLICY

- All claims must be made to SMP within 48 hours of receipt of Product.
- For all returns, please call SMP to request a Return Authorization Form and pre-paid return shipping labels.
- All expired Controlled Substances are non-returnable. Please refer to DEA Form 41.
- Products ordered in error are returnable and will incur a 25% restocking fee.
- Products shipped in error by SMP or saleable items (returned within 30 days and/or at least 6 months prior to the expiration date) will receive 100% credit.
- Manufacturer's return policies will apply to all outdated, damaged or seasonal merchandise.
- Unauthorized returns will not be eligible for credit.

CHARGEBACKS

PHS & GPO pricing will reflect a markup for Distribution and Administration services. Customer hereby agrees to indemnify and hold SMP harmless in the event that there is any change in the status of customer's right to receive contract pricing. Customer hereby agrees to immediately pay SMP the amount stated by a re-bill showing the higher pricing of the Product delivered, which is the result of a manufacturer chargeback for any reason.



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BLANKET CERTIFICATE OF RESALE

Customer certifies that if tangible personal property hereafter purchased is for purposes of resale, Customer assumes liability for payment of Retailer's Occupation Tax, Service Occupation, Sales Tax or Use Tax with respect to receipts from the resale of this property to users or consumers. This certificate shall be considered a part of each order which Customer shall give, unless such order specifies otherwise.

CREDIT REFERENCE AUTHORIZATION

Customer hereby authorizes SMP to conduct such investigation as SMP shall in its sole discretion deem necessary to verify the information supplied by Customer on the credit application and to verify Customer's credit worthiness and hereby agrees to release all persons, companies' or corporations using or supplying such information, including SMP, from any claims and/or losses that may result there from.

DISCLAIMER

Notwithstanding anything to the contrary contained herein, Customer acknowledges and agrees, on behalf of itself and each of its affiliates and other purchasers, that SMP is not the manufacturer of any Products. SMP (on behalf of itself and its affiliates) disclaims all warranties, express or implied, including those of merchantability, non-infringement and fitness for a particular purpose, and no oral or written information provided by SMP or its affiliates or their respective employees or other representatives have created or will create any warranty. In no event will SMP or its affiliates be liable for any claims, causes of action, obligations, liability, liens, indebtedness, debts, judgments, damages (of any kind and nature), losses, costs, expenses, and fees (including, without limitation, reasonable attorney, expert, and accountant fees) (Losses), including, without limitation, bodily injury or death, resulting from an individual's use of the Products, except to the extent caused by the negligence or willful misconduct of SMP. In no event shall SMP or its affiliates be liable for any special, indirect, incidental, exemplary, punitive or consequential damages (including, without limitation, lost profits) even if Customer has been advised of such damages.

LIMITATION OF LIABILITY

Customer's exclusive remedy for a defective Product shall be the replacement of such defective Product, and SMP's liability for any Losses resulting from any defective Product shall be limited to the purchase price of such Product.

SECURITY STATEMENT

SMP hereby reserves the right to demand that any advances of merchandise on credit be secured by appropriate security agreements, and/or personal guarantees.

FORCE MAJEURE

SMP shall not be liable for any failure or delay in performance under these terms and conditions to the extent said failure or delay is caused conditions beyond its reasonable control including, but not limited to, Acts of God, wars or civil commotion, destruction of facilities or materials by fire, earthquake, storm or other natural disaster, labor disputes or shortages, product or material shortages, transportation delays or breakdowns or other delivery disruption.

GOVERNING LAW AND VENUE

These terms and conditions have been made and entered into in the State of Illinois and shall be governed by and construed and enforced in accordance with the laws of the State of Illinois, without regard to conflict of laws principles. Customer hereby irrevocably and unconditionally (a) agrees that any action or proceeding arising out of or in connection with these terms and conditions shall be brought only in a federal court sitting in the State of Illinois (the Illinois Courts), and not in any other state or federal court in the United States of America or any court in any other country; (b) consents to submit to the exclusive jurisdiction of the Illinois Courts for purposes of any action or proceeding arising out of or in connection with this Agreement; (c) waives any objection to the laying of venue of any such action or proceeding in the Illinois Courts; and (d) waives, and agrees not to plead or to make, any claim that any such action or proceeding brought in the Illinois Courts has been brought in an improper or inconvenient forum.

SECURITY STATEMENT

H. D. Smith and Smith Medical Partners hereby reserve the right to demand that any advances of merchandise on credit be secured by appropriate security agreements, and/or personal guarantees.

The undersigned:

- (1) Acknowledges that the agreement has been read and reviewed;
- (2) Represents that the person signing this agreement has the authority to bind Applicant to the terms and conditions set forth herein (if Applicant is a corporation, attach a corporate resolution);
- (3) Warrants, covenants and agrees that all of the information provided to H. D. Smith and Smith Medical Partners is true and correct; and
- (4) Agrees to pay and perform all of the obligations of Applicant or Customer included is the agreement according to the stated terms.

Signature (Physician or Agent) _____

Date _____

Print Name _____

Title _____