



## **General Terms and Conditions**

**Effective January 1, 2020**

### **Agreement**

This document sets forth terms and conditions of sale that shall govern all purchases ("General Terms and Conditions") by any entity that orders products directly ("Customer") from Pacira Pharmaceuticals, Inc. ("Pacira"). Pacira may amend the General Terms and Conditions from time to time without notice. The version of Pacira's General Terms and Conditions in effect at the time of a sale, together with any credit application or other written agreement executed by Customer and Pacira relating to Products shall constitute the complete and entire agreement between the parties. In the event of a conflict between the General Terms and Conditions and any individual written agreement between Pacira and Customer, the terms and conditions of the individual written agreement shall supersede the terms and conditions contained in the General Terms and Conditions. Any statement contained on any purchase order or similar document, which is not specifically approved by Pacira in writing, will not be considered an agreement between the parties. EXCEPT AS SET FORTH ABOVE, BY PLACING AN ORDER FOR ANY PACIRA PRODUCT, CUSTOMER ACCEPTS, WITHOUT EXCEPTION, ALL OF THE TERMS AND CONDITIONS CONTAINED IN THE GENERAL TERMS AND CONDITIONS.

### **Own Use**

Unless otherwise agreed in writing by Pacira, Customer agrees that it will restrict the use of the products to the United States, including all of its possessions and territories.

#### **Wholesalers, Distributors, and Pharmacies**

Customer represents and warrants that all purchases made by Customer are for its "own use" as defined by Abbott Laboratories et al. v. Portland Retail Druggist Association, Inc. et al., decided by the U.S. Supreme Court on March 24, 1976.

#### **Hospitals, Health Systems, Ambulatory Surgical Centers, and other Sites of Care**

Customer represents and warrants that each facility owned or operated by Customer ("Customer Facility") meets the following "own use" conditions: Customer Facilities will (i) only distribute products to other Customer Facilities, (ii) dispense/administer only to patients being cared for within a Customer Facility, or (iii) not sell, or distribute products to any other entity.

#### **Health Care Providers**

Customer will only dispense/administer products to patients being cared for by Customer. Customer will not sell or distribute products to any other entity, except, as necessary, to the medical facility in which Customer will dispense/administer the product to patients.

### **Orders & Delivery**

All orders must have a minimum value of \$500 per order. Orders totaling less than \$500 will be assessed a minimum order charge of \$50.

Customer may place orders by calling Customer Service at 1-855-803-9480. Some customers may be able to place orders electronically via (1) Electronic Data Interchange, (2), facsimile, or (3) mail. Please call Customer Service at 1-855-803-9480 to determine eligibility.

All orders are subject to acceptance by Pacira. Pacira reserves the right to reduce, defer, backorder, or decline orders. Pacira reserves the right to cancel backorders at any time.

Nothing herein will be construed as requiring Pacira to accept any order, ship any product, offer any pricing, or extend any credit to any Customer. Nothing contained herein will be construed to limit or restrict Pacira's right, in its sole discretion, to discontinue the manufacture, sale, or distribution of any of its products, without notice, at any time without penalty or liability to Customer.

All orders will be shipped F.O.B. Destination. Risk of loss will pass from Pacira to Customer upon delivery of products to the destination specified by the Customer. Pacira will determine the time, route, and carrier of all shipments. If Customer requests expedited or alternate shipping arrangements, Customer will pay any applicable shipping, handling, and/or administrative charges.

Upon delivery of products, Customer will immediately inspect the products and notify Pacira of any damages, shortages, or overages within five (5) business days. If Customer does not notify Pacira within the time period specified, the delivery will be considered accepted in good condition, and Customer's failure to comply with the foregoing time period shall constitute a waiver by Customer of all claims with respect to such product.

### **Prices**

Products will be invoiced at the price in effect on the date of the invoice. Pacira reserves the right to implement price changes at any time without notice. Pacira reserves the right to rebill Customer if Pacira determines Customer was billed an incorrect price. Quoted prices are exclusive of federal, state, and local taxes of any type.

Customer will pay directly, or reimburse Pacira, for any use tax, sales tax, duty, inspection or testing fee, or any other tax, fee or charge of any nature imposed by any governmental authority on purchases of Pacira products by Customer. If Customer claims an exemption from any tax, it must promptly inform Pacira and provide copies of all applicable exemption certificates.

### **Extension of Credit**

Some Customers may be eligible for credit terms, subject to Pacira's review and approval. Customer agrees to furnish all financial information requested by Pacira prior to initial shipment of product, and thereafter upon request. By requesting credit terms, Customer authorizes Pacira to conduct such investigations as it may deem necessary to verify Customer's creditworthiness and agrees to release all person, companies, or corporations using or supplying such information, including Pacira, from any claims and/or losses that may result therefrom.

Customer must notify Pacira, in writing, of any sales or transfer of majority ownership, voting power or controlling interested in Customer and any change of address of any of Customer's direct-purchasing locations at least thirty (30) days before taking such action.

Pacira may, in its sole discretion, at any time, without prior notice, discontinue service, change Customer's credit terms, and/or require payment before shipment of any product. Customer waives all claims against Pacira for said conduct.

### **Payment Terms**

Payments for Products are payable pursuant to the terms set forth in the applicable invoice, calculated from the date of invoice. Standard payment terms for Customers with credit terms are Net 30 days from date of invoice, with payment required via check, wire or ACH payment. Customers without credit terms must pay for products prior to shipment.

Pacira's acceptance of any payment less than the full amount of indebtedness will not constitute a waiver of Pacira's right to collect the balance and will not be deemed an accord and satisfaction. If, for any reason, Customer is unable to pay for purchases when due, Pacira may charge interest, computed at the maximum legal rate, and charge such additional collection costs, charges and expenses, including reasonable attorneys' fees.

Customer is not permitted to take a deduction unless authorized by a prior credit memo, or as otherwise agreed to by Pacira in writing.

### **Credit Card Payments**

Customer may desire to use a credit card to pay Pacira. The following terms will govern all credit card payments.

1. Pacira may keep Customer's credit card information and submit a request for payment from such credit card company on the payment due date.
2. Pacira will use Customer's authorized signature for such payment authorization and may keep it on file for all subsequent credit card transactions. Customer must notify Pacira of any change of credit card to be used prior to purchase.
3. Customer agrees that in the event Customer's credit card payment fails to clear the collection process or is denied for any reason whatsoever, Pacira may revoke

acceptance of all current and future orders, or require other payment methods. Any charge to be contested must first be brought to Pacira for resolution.

### **Storage and Handling**

Customer is fully responsible for complying with all applicable federal, state, and local laws and regulations relating to the storage, handling, and distribution of such products. Customer warrants that it will maintain, at all times, the proper licenses required to receive, handle, and store Pacira's products. Customer will, at all times, maintain proper procedures and controls to ensure proper handling, storage, and shipment of each product in accordance with all handling, maintenance, storage, transportation, delivery and distribution requirements as labeled on the products. Customer shall not take any action or allow any action to be taken that would adversely affect (a) the integrity of any product and/or (b) the safety and security of the supply chain. In addition, Customer shall take such precautions as are necessary to prevent products from falling into the hands of those who may not lawfully possess or handle such products.

### **Pacira Policies**

Customer agrees to abide by Pacira's policies, as may be amended from time to time, including Pacira's then current Return Goods Policy (available upon request) and Pacira's then current Contract and Chargebacks Management Policy (available upon request). Pacira reserves the right, in its sole discretion, to modify its Return Goods Policy and/or Contract and Chargebacks Management Policy from time to time without notice and without Customer's consent. To obtain a copy of the most current policies, please call Customer Service at 1-855-803-9480.

### **Warranty**

Pacira warrants that, as of the date of shipment, the Product will not be adulterated or misbranded within the meaning of the United States Food, Drug and Cosmetic Act, as amended, and in effect at the time of such shipment, and that such product is not, at the time of shipment, merchandise that may not be introduced into interstate commerce. PACIRA HEREBY EXPRESSLY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, REGARDING PRODUCTS SOLD TO CUSTOMER, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR DELIVERY OF DEFECTIVE OR NONCONFORMING PRODUCTS WILL BE TO RECEIVE CREDIT OR LIKE QUANTITY OF REPLACEMENT GOODS. IN NO EVENT WILL PACIRA BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXAMPLARY, SPECIAL, OR ANY OTHER INDIRECT DAMAGES OF ANY KIND (WHETHER ARISING UNDER CONTRACT, TORT, OR OTHERWISE) INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR LOSS OF BUSINESS OPPORTUNITY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

### **Indemnification**

Pacira will indemnify, defend, and hold harmless Customer, its officers, directors, employees, agents, and insurers against any and all claims, demands, actions, damages, expenses, costs, judgments, and liabilities (including, without limitation, interest, penalties, and reasonable attorneys' fees and investigative costs) incurred by Customer caused solely by Pacira's breach of Pacira's express warranty.

Customer will indemnify, defend, and hold harmless Pacira, its officers, directors, employees, agents, and insurers from and against any and all third party claims, demands, actions, damages, expenses, costs, judgments, and liabilities (including, without limitation, interest, penalties, and reasonable attorneys' fees and investigative costs) incurred by Pacira, arising from, in connection with, or as a consequence of (i) any negligence, wrongful act, or omission by Customer, or (ii) Customer's use or sale of products, except to the extent that such suit or demand arises out of the failure of products to meet Pacira's express warranty.

The party seeking indemnification will give the other party prompt notice of the assertion of the claim, or service of a complaint, and fully cooperate in the defense thereof by counsel of the indemnifying party's choice.

**Confidentiality**

Customer agrees to maintain the confidentiality of, and not disclose, Pacira's Confidential Information. All non-publicly available information provided to Customer concerning Pacira and/or its products, including, without limitation, pricing, credit terms, product lists, providers, purchasing requirements, company policies, and correspondence (collectively "Confidential Information") will remain the sole and exclusive property of Pacira. Customer will not use, allow the use of, duplicate, reproduce or copy any Confidential Information for any purpose other than in connection with the purposes of these General Terms and Conditions.

**Contact**

Phone: 1-855-803-9480

Fax: 1-855-803-9481

E-mail: [PaciraCS@ICSCconnect.com](mailto:PaciraCS@ICSCconnect.com)