

SHARP SUPPLY TERMS AND CONDITIONS

THE FOLLOWING TERMS AND CONDITIONS APPLY TO THE SALE BY SHARP CORPORATION (“SELLER”) OF GOODS AND SERVICES TO BUYER. ANY ORDER PLACED BY BUYER IS SUBJECT TO WRITTEN ACCEPTANCE BY SELLER. THESE TERMS AND CONDITIONS CONSTITUTE THE SOLE TERMS AND CONDITIONS OF ANY ORDER BETWEEN THE PARTIES AND BUYER’S AGREEMENT WILL BE CONCLUSIVELY ESTABLISHED (I) WHEN BUYER HAS RECEIVED THESE TERMS AND CONDITIONS FOR TEN (10) DAYS WITHOUT OBJECTION, OR (II) BY BUYER’S ACCEPTANCE OF, OR PAYMENT FOR, ALL OR ANY PART OF THE GOODS OR SERVICES. SELLER’S ACCEPTANCE OF ANY ORDER IS EXPRESSLY MADE CONDITIONAL UPON BUYER’S ACCEPTANCE OF THE TERMS AND CONDITIONS CONTAINED HEREIN, AND SELLER OBJECTS TO ANY ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS, INCLUDING, BUT NOT LIMITED TO THOSE CONTAINED IN BUYER’S PREPRINTED FORMS. SELLER WILL NOT BE DEEMED TO HAVE WAIVED THESE TERMS AND CONDITIONS OF SALE IF IT FAILS TO OBJECT TO PROVISIONS CONTAINED IN BUYER’S FORMS OR OTHERWISE. BUYER’S SILENCE OR ITS ACCEPTANCE OF SELLER’S GOODS CONSTITUTES ITS ACCEPTANCE OF THESE TERMS AND CONDITIONS OF SALE AND SELLER HEREBY NOTIFIES CUSTOMER THAT THE TERMS AND CONDITIONS INCLUDED HEREIN ARE THE ONLY TERMS AND CONDITIONS UNDER WHICH SELLER AGREES TO BE BOUND.

1. All packaging materials, packaging, labeling and/or supplying of the packaged products as provided for herein are subject to these terms and conditions (the “Agreement”) and Buyer agrees that all orders from Buyer to label and package Buyer’s products and supply Buyer with the packaged products are placed under this Agreement.
  
2. Seller warrants that (a) Buyer’s products shall be stored, processed, packaged and labeled in accordance with the specifications agreed to by the parties in writing (the “Specifications”); (b) the packaged products furnished by Sharp to Buyer under this Agreement (i) shall be of the quality specified in, and shall conform with, the Specifications for packaging, (ii) shall be stored and supplied in conformity with the Specifications and (iii) shall not contain any material provided by or on behalf of Sharp, which material has not been used or stored in accordance with the Specifications; (c) it will not introduce any materials not provided for in the Specifications that would cause the packaged products to be adulterated within the meaning of Section 501 of the FDCA; and (d) the packaged products shall not be misbranded within the meaning of the FDCA (except with respect to any misbranding resulting from the Specifications, for which Buyer shall bear responsibility). Except as otherwise provided in this Agreement, any claim for breach of warranty that is not brought within one (1) year from the date of delivery shall be deemed to have been waived by Manufacturer.  
**NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT TO THE CONTRARY, (A) THE WARRANTIES WITH RESPECT TO THE STORING, PROCESSING, PACKAGING, LABELING AND DELIVERY OF THE PRODUCTS AND THE PACKAGED PRODUCTS STATED IN THIS SECTION 2 ARE IN LIEU OF ALL OTHER WARRANTIES OF SHARP, ORAL OR WRITTEN, EXPRESSED OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, (B) IN NO EVENT SHALL SHARP HAVE ANY LIABILITY FOR ANY EXEMPLARY, PUNITIVE, INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY OR FORM OF ACTION IN CONNECTION WITH THE STORING, PROCESSING, PACKAGING, LABELING AND DELIVERY OF THE PRODUCTS OR THE PACKAGED**

PRODUCTS, AND (C) THE OBLIGATION OF SHARP SET FORTH IN SECTION 3 TO REPLACE OR REPAIR NONCONFORMING PACKAGED PRODUCTS AND IN SECTION 8 WITH RESPECT TO RECALLS SHALL BE BUYER'S EXCLUSIVE REMEDIES UNDER THIS AGREEMENT.

3. Seller's liability for failure to comply with this Agreement, and Buyer's sole remedy hereunder, shall be, at Seller's discretion, to replace or repair the packaged products not in conformity with the description herein contained, which packaged products shall be returned to the Seller's plant for the purpose of replacement or repair, or to provide a refund therefor. Buyer must give Sharp written notice of rejection of packaged products that fail to meet the Specifications or which otherwise breaches Sharp's warranties, covenants and obligations under this Agreement within thirty (30) days of delivery. Sharp, at its sole cost and expense, shall provide Buyer with any missing quantities and/or replace as soon as commercially reasonable packaging for any non-conforming packaged products and Buyer, at its sole cost and expense, shall replace applicable products and components for such non-conforming packaged products. Any claim of non-conforming goods must be made in writing to Sharp within the thirty (30) day period set forth above or it shall be deemed to have been waived by Buyer.
4. Seller shall not be liable for any delay in delivery due to fire, strikes, labor disputes, accidents to machinery, delays in transportation or any other delays beyond its reasonable control.
5. Buyer hereby indemnifies Seller against liability whatsoever for patent, trademark or copyright infringement in any way arising out of the product, the packaging material or the preparation or manufacture of any packaging material in accordance with Buyer's specifications. Buyer shall further indemnify Sharp from and against any and all liability that may be incurred by Sharp arising out of or on account of: (i) the possession, sale, use or consumption of the products or any other product of Buyer; (ii) Buyer's supply of the products to Sharp under this Agreement; (iii) any breach by Buyer of any of its covenants, agreements, representations and/or warranties set forth herein; (iv) any negligent or reckless act or omission to act on the part of Buyer in connection with its performance pursuant to this Agreement. These indemnification obligations shall survive the termination of this Agreement.
6. Each party agrees to hold in confidence all confidential information of the other party relating to methods, processes, research data, sales and marketing information acquired as a result of this order, until such information has been published or disclosed to the general public or is otherwise required to be disclosed by law or a court of competent jurisdiction.
7. Seller has not solicited nor received approval from the Food and Drug Administration to package the products. It is the Buyer's responsibility to secure the proper approvals from the FDA to use the Seller as its packager.
8. Seller shall have no liability for any recall or withdrawal actions except to the extent of Sharp's gross negligence or willful misconduct, in which case Sharp's liability shall be limited to \$1,000,000. Any claim made against Seller resulting from a recall action will be subject to the condition that Seller participates in all discussions with the Food and Drug Administration in the matter.

9. Seller does not maintain facilities for the assay of customer products; it is Buyer's responsibility to ascertain that no reaction will take place between the product and the packaging materials. Seller shall have no responsibility or liability for an adverse reaction of any nature.
10. This order cannot be modified or cancelled without the written consent of Seller, and in no event shall any order be modified or cancelled for any portion thereof already in process, except upon terms satisfactory to Seller, in its sole discretion.
11. Seller shall submit invoices to Buyer for all shipments of packaged products hereunder upon delivery of such packaged products to Buyer's carrier and each invoice shall be payable within thirty (30) days of the date of such invoice. A service charge of 1.5% per month, 18% annual, will be assessed on all amounts over 30 days past due. Seller shall have, and Buyer hereby grants to Seller, a security interest in all of Buyer's products, the packaged products and in any proceeds thereof, to secure payment of the purchase price for the packaged products, and Seller shall have all of the rights and remedies of a secured party under the Uniform Commercial Code ("UCC") in force in the jurisdiction where Seller seeks to enforce any of such rights or remedies. If requested by Seller, Buyer shall sign and deliver to Seller such documents, in a form acceptable to Seller, as Seller may require in order to confirm or perfect its security interest in the products, packaged products and proceeds thereof.
12. Buyer shall arrange for the shipment of any Buyer supplied product and components to Seller with Buyer approved carriers. Seller shall arrange for the shipment of the packaged products in accordance with Buyer's instructions, all of which shipments shall be made F.O.B., Sharp's loading docks (as defined in the Pennsylvania UCC). Buyer shall provide Seller with a list of Buyer approved carriers. Seller shall schedule freight pick up, load the carrier's trailer and complete any necessary documentation relating thereto. Buyer shall pay outbound freight delivery costs. Buyer shall be responsible for investigating any incoming and outgoing in-transit product losses. Seller shall assist in the investigation upon request and where applicable. Buyer is responsible for reporting unexplained in-transit losses to the appropriate federal, state, local and foreign authorities, including but not limited to the Food and Drug Administration and the Drug Enforcement Administration, within three (3) business days of the completion of any such investigation. Buyer shall periodically audit its approved carriers to ensure that such approved carriers continually require their employees whose responsibilities include the known handling of prescription drugs to undergo criminal background checks, initial and random toxicology screening, and security training and that such approved carriers ensure security via a verifiable security system. In addition, Buyer shall use best efforts to ensure that its approved carriers comply with all applicable federal, state and local laws.
13. Title to all products, packaged products, all work in process to produce packaged products and/or any other property of Buyer shall at all times remain with Buyer. Seller shall not be liable for risk of loss to any of the foregoing or any other property of Buyer, except in the case of gross negligence or willful acts or omissions by Seller.

14. Buyer hereby grants to Sharp a non-exclusive, royalty-free license to use any of Buyer's intellectual property as may be necessary for Sharp's fulfillment of its services in accordance with this Agreement.
  
15. Both parties agree to comply with all applicable laws.
  
16. This Agreement is made subject to the laws of the Commonwealth of Pennsylvania, without reference to principles of conflicts of laws. Each party agrees that suit may be instituted at any federal court in the Eastern District of Pennsylvania or in State Court in the Commonwealth of Pennsylvania and each waives any objection which such party may now or hereafter have to the laying of the venue of any such action, suit or proceeding, and irrevocably submits to the jurisdiction of any such court. This Agreement is a joint product of both parties and shall not be construed for or against either party as the draftsman of any particular provision.