



Xellia Pharmaceuticals USA, LLC

Standard Terms and Conditions of Sale

REFERENCES OF SERVICES

Customer Service/Ordering/Accounts Receivable

(Hours: 9:00am – 7:00pm EST)

Phone: 833-295-6953

Fax: 877-204-4148

Email: xelliapharmacs@icsconnect.com

A/R email: xelliapharmaAR@icsconnect.com

Note: All orders received after 3pm will be shipped the next day

Customer Setup/Credit Approval

Email: NewCustomer.NA@xellia.com

Shipping Address

Integrated Commercialization Solutions (ICS)

6450 La Salle Drive

Lockbourne, OH 43137

All purchases of Xellia products are subject to and expressly conditioned upon these Terms and Conditions of Sale (Terms and Conditions"), which are accepted by the Customer, and shall be deemed binding upon placing an order for Product(s) (as hereinafter defined). Xellia may modify these Terms and Conditions, for any reason at any time, by posting a new version on Xellia's Website <https://www.xellia.com/us/termsandconditions>. It is the Customer's responsibility to review the Terms and Conditions prior to submitting each order.

1. DEFINITIONS

- a. Customer: means end user customers that purchase directly from
- b. Product: means all Xellia labeled products

2. **PAYMENT TERMS.** Immediately upon shipment of the Products to Customer, Xellia shall submit invoices therefore to Customer. Payment of all invoices shall be due within thirty (30) days of the date on such invoice.

3. **WARRANTIES.** Xellia warrants that (1) the Products are approved for sale by the FDA and are deemed safe and effective by the FDA (or they are approved drugs that predate the FDA's requirements for determining safety and efficacy and they are approved for sale by the FDA) in accordance with the Product's FDA approved product information, (2) the Products are safe for their intended use when used in accordance with Xellia's promotional materials and/or well-documented use for other indications; (3) the Products are manufactured in accordance with current good manufacturing practices (cGMP) and FDA requirements; (4) Xellia has not been misleading or negligent in its application to the FDA for the Products; and (5) the Product(s) will not, at the time of receipt by Customer or an Authorized Distributor, be adulterated or misbranded within the meaning of the Federal Food Drug and Cosmetic Act, nor will such Product(s) be an article which may not, under the provisions of Sections 404 or 505 of said Act be introduced into interstate commerce. If any Products violate the warranties set forth above and a claim is made by Customer or an Authorized Distributor on account of such violation, Xellia will, at the option of the Customer or the Authorized Distributor, either replace the affected Products or credit the Credit or the Authorized Distributor.

4. **SHIPPING.** Orders will be shipped FOB Point of Destination with freight and insurance prepaid. Orders will be shipped by carrier selected by Xellia.

5. COMPLIANCE WITH LAW AND GOVERNMENT PROGRAM

- a. Compliance with Law. Xellia represents and warrants that to the best of its knowledge, after due inquiry, it is, in compliance with all federal and state laws, ordinances and regulations that are material to the operation of its

business and the performance of its obligations under this Agreement (“Legal Requirements”), including, but not limited to, Legal Requirements pertaining to the safety of the Products, occupational health and safety, environmental protection, nondiscrimination, antitrust, health care regulation, the Health Insurance Portability and Accountability Act (“HIPAA”) and equal employment opportunity.

- b. Government Program Participation. Xellia represents and warrants that it is not (i) excluded from participating in any “Federal health care program” as that phrase is defined in 42 U.S.C. § 1320a-7b(f) (“Excluded”), or (ii) debarred, suspended, declared ineligible, or voluntarily excluded by any Federal department or agency (collectively, “Debarred”).
- c. Discount Safe Harbor. Regulations implementing the federal health care program anti-kickback law, 42 U.S.C. § 1320a-7b(b), include a “safe harbor” for “discounts” (see 42 C.F.R. § 1001.952(h)). To the extent that Customer provides a price reduction to a Member, then Customer shall comply with the requirements set forth in 42 C.F.R. § 1001.952(h)(2).

6. **GOVERNING LAW**. These Terms and Conditions will be governed by the laws of the State of Delaware, without regard to the principles of conflict of laws.

7. **OWN USE**. Xellia shall advise Customer that Products purchased hereunder shall be purchased for each Customer’s “own use” within the meaning of the Nonprofit Institutions Act as interpreted by the U.S. Supreme Court in *Abbott Laboratories v. Portland Retail Druggist Association, Inc.*, 425 U.S. 1 (1976), and following cases.

8. **FORCE MAJEURE**. Xellia shall be excused from any delay or failure in performance hereunder arising out of causes beyond its reasonable control or without its fault or negligence. Such causes may include, but are not limited to fires, strikes, embargoes, shortage or unavailability of supplies or raw materials or components from customary sources at customary prices, acts of God, production or delivery problems, labor problems, acts of government, war sabotage, acts of Customer, inability to secure transportation, national disasters or discontinuance of product line.

9. CONFIDENTIALITY

- a. Nondisclosure. Except as otherwise expressly provided in this Section, Xellia and Customer hereby mutually covenant and agree (i) to keep the terms of these Terms and Conditions, (collectively, the “Confidential Information”), strictly confidential, and (ii) not to disclose the Confidential Information to any third party. Notwithstanding the foregoing, Xellia may disclose the Confidential Information in connection with the usual and customary operation of Xellia’s businesses, including, but not limited to, disclosure to third party auditors and attorneys. In addition, the foregoing confidentiality obligation shall not apply to information that is required to be disclosed by law; provided, however, that the receiving Party so required to disclose shall first notify the disclosing Party to enable it to seek relief from such requirement, and render reasonable assistance requested by the disclosing Party in connection therewith.

10. **ASSIGNABILITY**. Xellia shall have the right to assign its rights and obligations under any agreement that is subject to these terms and conditions to a successor, affiliate, or unrelated third party without the consent of any other party.

11. **RETURN POLICY**. Xellia’s Return Policy, located at <https://www.xellia.com/us/termsandconditions> is incorporated herein as part of these Terms and Conditions. The Return Policy applies only to Products purchased directly from Xellia and does not apply to purchases of Products made through a distributor.

This communication and the information it contains are intended for the person(s) or organization(s) named above and for no other person or organization and may be confidential and protected by law. Unauthorized use, copying or disclosure of any part is strictly prohibited and may be unlawful.