

PaxVax Product Purchase Terms and Conditions

Effective September 1, 2015

- 1. Purchase, Sale and Use of Product.** These Terms and Conditions govern the purchase of a vaccine or other product ("Product") from PaxVax, Inc. ("PaxVax"). Any customer who purchases Product from PaxVax pursuant to a written agreement other than these Terms and Conditions and Product orders submitted hereunder is not eligible to purchase Product under these Terms and Conditions (unless otherwise specified in such other written agreement). Orders submitted by customers who are party to (or who may participate under) any other written agreement with PaxVax relating to the sale or purchase of Product are subject to the terms and conditions set forth in the other written agreement and not herein (unless otherwise specified in such other written agreement). No customer who purchases Product hereunder may market, promote, administer or use Product for the benefit of persons or entities located outside the United States, or where it ought reasonably to be aware that the ultimate destination for Product is outside the United States.
- 2. Product Ordering; Delivery.** Each customer may create a direct purchase account by calling PaxVax Customer Service at 800-533-5899 and may order Product (a) by calling PaxVax Customer Service at 800-533-5899 or faxing order forms supplied by PaxVax to 800-392-9490 or (b) via any e-commerce website maintained by PaxVax or any third party engaged by it for which PaxVax notifies the customer. Product purchased hereunder will consist of units containing the number of doses of Product specified in the applicable Product prescribing information. Each order submitted by a customer is subject to PaxVax's confirmation of the customer's valid state license number and authorizations and the customer's creditworthiness. PaxVax will use reasonable commercial efforts to deliver Product ordered by a customer to the destination designated by the customer in the customer's direct purchase account. PaxVax will be responsible for all costs of shipment of Product to the customer. PaxVax assumes no obligation to comply with any special shipping requests made by a customer, including, without limitation, any request to deliver Product by a specified date. PaxVax is responsible for obtaining all licenses required to deliver Product to the specified destination. PaxVax's obligation to deliver Product is subject at all times to any superseding requirement imposed by any governmental authority and to the condition that PaxVax is able to manufacture a sufficient supply of Product to meet the demands of all of its customers. Notwithstanding anything herein to the contrary, in the event of a natural disaster or shortage of Product or any other event giving rise to a government requirement, or in the event that for any reason PaxVax is otherwise unable to supply all or any portion of Product ordered by a customer, PaxVax will notify the customer and be relieved (without incurring any liability) of all obligation to supply or deliver Product ordered by the customer.
- 3. Payment Terms and Instructions.** Customers are obligated to pay for Product by, at PaxVax's discretion, (i) credit card processed at the time of shipment of the purchased Product by PaxVax or its designee, or (ii) on the payment due date specified in the invoice delivered by PaxVax with respect to the purchased Product by any method described in the invoice. Interest will be charged on overdue amounts at a rate equal to one and one-half percent (1.5%) per month, or, if less, the maximum amount permitted by applicable law, until the date payment is received by PaxVax.

4. **Product Price.** The price for Product is as established by PaxVax and set forth from time to time in the direct purchase account established by a customer and excludes surcharges for any excise or other taxes or assessments levied on Product. Amounts invoiced to and payable by customers will reflect all such surcharges.
5. **Inspection of Product by Customers; Right to Return Product.** Customers must, within 72 hours after delivery of Product, conduct a physical inspection of the packaged Product and notify PaxVax of any issue or physical damage that is apparent from the inspection by calling PaxVax Customer Service at 800-533-5899. If a customer fails to give the notice, then the customer will be conclusively presumed to have accepted the shipment and PaxVax will have no liability to the customer for any defects that could have been identified by the inspection or for any discrepancies between the shipment received and the amount of Product ordered by the customer. Any defect or damage to Product that is not identifiable from a physical inspection will remain grounds for rejection of Product if the customer notifies PaxVax in writing within 72 hours following discovery of the defect or damage. Upon receipt of the notice from a customer, PaxVax will conduct an investigation and if PaxVax agrees with the customer's determination, (i) PaxVax will use reasonable commercial efforts to supply replacement Product to the customer, or if no replacement Product can be supplied, PaxVax will issue a credit note or refund to the customer for the Product, and (ii) the customer must ship the Product in accordance with instructions provided by PaxVax. If PaxVax, in its sole discretion, determines that no defect or damage to the Product exists, then the customer must accept delivery of the Product and pay the invoiced price for the Product (in which event PaxVax will not be deemed to be in breach of these Terms and Conditions or have any further liability to the customer with respect to the alleged defect or damage). In the event a customer has not used or administered Product as of the expiration date of the Product, the customer will not be entitled to any refund but will be entitled to a credit note in accordance with the terms and conditions set forth in PaxVax's return policy then in effect. Other than as set forth in this Section and in such return policy, customers may not return Product.
6. **Passage of Title; Risk of Loss.** All orders for Product are shipped F.O.B. Destination. Title to Product and risk of loss of each shipment of Product will pass to the customer upon delivery to the destination designated by the customer in the customer's direct purchase account.
7. **Limitations on Marketing.** Customers may not sell, promote or market Product in a manner that is, or engage in activities or efforts that are, disparaging or otherwise damaging to PaxVax or any Product brand. Customers may not hold themselves out as representatives or agents of PaxVax or otherwise as being entitled to bind PaxVax in any way, and customers must make clear in all dealings with other persons or entities that they are not acting as agents of PaxVax.
8. **Covenants of Customers.** Each customer agrees that it will:
 - obtain and maintain all licenses and approvals that may be necessary for the use, administration, storage and marketing of Product, as applicable to the customer, in the United States;
 - not initiate any contact with any governmental authority in relation to Product without the express written consent of PaxVax, unless required by applicable law, and insofar as requests for information or correspondence in relation to Product are made of a customer by a governmental authority, unless otherwise required by law, the customer must consult with PaxVax and keep PaxVax fully apprised of all communications;

- not make any representation nor give any warranties other than those printed on Product packaging, including the Product prescribing information;
- not administer or use Product for indications not approved by a governmental authority or listed on Product packaging, including the Product prescribing information;
- observe and comply with any storage, handling, stock control and operational practices and procedures of PaxVax in effect from time to time or as required by any governmental authority or applicable law;
- observe and comply with procedures for adverse event reporting and provision of medical information of PaxVax in effect from time to time;
- execute any recall or withdrawal of Product from the market in accordance with procedures of PaxVax in effect from time to time; and
- comply with applicable law or any other applicable requirements imposed by a governmental authority relating to Product.

9. **Disclaimer of Warranties; Withdrawal of Product Approval.** PaxVax makes no representation or warranty and gives no undertakings in relation to the grant (by any date or at all) of the licenses or authorizations required to market, manufacture or release for export Product lawfully in the United States, or the maintenance of the licenses and authorizations, and customers will have no claim against PaxVax arising out of any failure to obtain the grant or renewal of, or otherwise maintain, the licenses and authorizations. PaxVax will promptly notify customers in writing of any withdrawal of a Product's United States Food and Drug Administration approval or of a Product's material noncompliance with United States Food and Drug Administration standards.

10. **Modification of Product.** Subject to compliance with applicable laws and regulations, PaxVax may, in its sole discretion, modify Product as it deems appropriate or necessary or as may be required by any governmental authority, including changes in design, production or packaging of Product (including the applicable Product prescribing information) or withdrawal of Product in response to a governmental authority action, without liability to customers of any kind.

11. **Use of Trademarks; Limitations on Use of Intellectual Property.** Customers may not use any Product trademark for any purpose, or use any other trade name or trademark or other intellectual property rights of PaxVax, other than as expressly necessary to exercise their rights and perform their obligations under these Terms and Conditions. Customers must ensure that each reference to and use of any Product trademark is accompanied by an acknowledgement that it is a registered trademark of PaxVax. Upon request by PaxVax, each customer will deliver to PaxVax copies of examples of the customer's use of a Product trademark in order to assess compliance with this Section. Customers will not acquire any rights in respect of any trade names, trademarks or other intellectual property rights of PaxVax (including any Product trademark) or of the goodwill associated therewith and all the rights and goodwill are, and will at all times remain, vested in PaxVax. Customers may not: (a) make any modification to Product or its packaging or prescribing information; (b) alter, obscure, remove or tamper with any trademarks, markings, numbers, labels, indication of the source of origin, or other means of identification used on, or in relation to, Product; (c) use any Product trademark in any way which might materially prejudice its distinctiveness or validity or the goodwill of PaxVax therein; or (d) use or make any application for registration in the United States of any trademarks or trade names so resembling any trademark or trade name of PaxVax as to be likely to cause confusion or deception.

12. **Government Payment Programs.** Each customer represents and warrants that neither it, nor any individual employed by it, is currently included in the Department of Health and Human Services/Office of Inspector General List of Excluded Individuals/Entities or in the General Services Administration List of Parties Excluded from Federal Procurement and Nonprocurement Programs. Each customer must notify PaxVax immediately in writing if it or any individual employed by it is excluded or becomes reasonably subject to exclusion from a Federal healthcare program. If a customer or any individual employed by it is excluded or becomes reasonably subject to the exclusion from a Federal healthcare program, PaxVax may immediately terminate any outstanding order submitted by the customer and to refuse acceptance of any further orders from the customer.

13. **Confidential Information.** Each customer agrees that any and all information it obtains regarding PaxVax, including pricing information and all other contract information, is confidential information of PaxVax. Each customer (a) will not disclose PaxVax's confidential information to any third party without the prior written consent of PaxVax (except as required to comply with law or court order); (b) may disclose PaxVax's confidential information to its employees only to the extent that the employees are reasonably required by their duties to have knowledge of the confidential information, and provided that the employees are obligated to hold the confidential information in confidence and to otherwise comply with these Terms and Conditions; (c) will not hold PaxVax or its affiliates or their respective directors, officers, employees and agents liable for any errors or omissions in PaxVax's confidential information; and (d) will use reasonable care to safeguard PaxVax's confidential information and will make no misuse of the confidential information. Each customer acknowledges that any and all confidential information disclosed by PaxVax to the customer is and remains the property of PaxVax. PaxVax makes no representation or warranty, express or implied, as to the accuracy and completeness of its confidential information. Each customer agrees to return any PaxVax confidential information promptly upon written request and to retain no copies or excerpts thereof. Each customer's obligations under this Section will remain in effect for a period of five (5) years from the date that the last order of Product was submitted by the customer to PaxVax.
14. **Force Majeure.** PaxVax has no liability to customers for failure or delay in the performance of any obligation hereunder to the extent and for the period that the performance is prevented by reason of Force Majeure if PaxVax gives written notice of the Force Majeure to the affected customer within thirty (30) days of the occurrence of the Force Majeure. If the performance by PaxVax is prevented for a period exceeding ninety (90) days from the date of the notice, the affected customer may terminate all outstanding orders submitted by the customer (which, for the avoidance of doubt, will not affect the customer's obligations to pay amounts invoiced for Product previously delivered) by providing written notice to PaxVax, and thereafter (as well as during the period from the occurrence of the Force Majeure through and after the termination) PaxVax will have no liability to the customer under these Terms and Conditions or the cancelled order(s). As used herein, "Force Majeure" means any cause preventing or hindering the performance of these Terms and Conditions or any orders arising from or attributable to acts, events or circumstances beyond the reasonable control of PaxVax, including epidemics or pandemics of disease, acts of God, shortage of materials, war (declared or undeclared), labor disputes, accidents, acts of terrorism, fire, breakdown of machinery, government requisition or impoundment or other acts of any governmental authority, riot or civil commotion and any other acts, events or circumstances beyond PaxVax's reasonable control.
15. **Warranties of PaxVax.** PaxVax warrants that at the time of delivery to the destination designated by the customer in the customer's direct purchase account, Product ordered by the customer (a) will materially conform to the quality, identity, and strength standards of Product as described in its packaging, including its prescribing information; (b) will not be adulterated or misbranded (within the meaning of the U.S. Federal Food, Drug, and Cosmetic Act, as in effect at the time of delivery) and will not be prohibited from being introduced into interstate commerce; and (c) will have been manufactured in substantial compliance with then-current good manufacturing practices and any other applicable laws or regulations. This Section sets forth PaxVax's sole and limited warranties with respect to Product delivered to customers. To the maximum extent allowed by law, except as unambiguously and expressly set forth in this Section, PaxVax specifically disclaims, and each customer expressly waives and releases PaxVax from, all other warranties, conditions and terms regarding or relating to Product that may have been provided to the customer or otherwise that might have effect between the customer and PaxVax or be implied into these Terms and Conditions, a Product order, or any other collateral contract, whether by statute, common law or otherwise and whether express, implied or otherwise, including all implied warranties, conditions or terms of merchantability, quality, fitness for a particular purpose and non-infringement. The warranties contained in this Section will not apply to any Uncovered Product.
16. **Limitation on Warranties of PaxVax.** PaxVax is not liable to any customer, and each customer expressly waives and releases PaxVax from any liability, with respect to Product ("Uncovered Product") that (a) has been tampered with or in any way altered or modified after delivery to the customer's designated destination; (b) has been subject to misuse, negligence or accident after delivery to the customer's designated destination; (c) has been stored, handled, maintained, administered or used in a manner contrary to regulatory requirements, the Product packaging or prescribing information or PaxVax's instructions, or otherwise not as originally intended, after delivery to the customer's designated destination; or (d) has passed its expiration date.

17. **Limitation on Damages.** To the maximum extent allowed by law, in no event will PaxVax be liable for any indirect, special, punitive or consequential damages, or other damages relating to loss of use, income or profit, or loss or damage to person or property, arising out of or in connection with the marketing, sale or use of Product, including damages resulting from any negligence or breach of any obligation imposed on any customer. The exclusive remedy of a customer ordering product from PaxVax for claims with respect to these Terms and Conditions or any orders submitted by the customer will be pursuant to the indemnification provisions set forth in Section 18 below.
18. **Indemnification by PaxVax.** PaxVax will defend, indemnify and hold harmless each customer ordering Product and the customer's directors, officers, employees and agents (each, an "Indemnitee") from and against any and all claims, demands, actions, losses, expenses, damages, liabilities, costs and judgments (including reasonable attorneys' fees) ("Damages") directly arising out of any material breach of any warranty set forth in Section 15 above (as limited therein with respect to Uncovered Product) or any material default by PaxVax under these Terms and Conditions, *provided* that PaxVax will not, in any case, be obligated to defend, indemnify or hold harmless any Indemnitee from any the Damages that result from any acts or omissions of an Indemnitee (including, for the avoidance of doubt, any Damages that result in Product becoming an Uncovered Product).
19. **Indemnification by Customers.** Each customer will indemnify, defend and hold harmless PaxVax and its affiliates and their respective directors, officers, employees and agents from and against any and all Damages directly arising out of (a) any infringement by the customer of any intellectual property rights of PaxVax or third parties; (b) any material breach of any representation or warranty of the customer made in these Terms and Conditions or any material default by the customer hereunder or under any order submitted by the customer; and (c) any act or omission by the customer or its directors, officers, employees or agents with respect to any Product resulting in a Product becoming an Uncovered Product.
20. **Survival of Indemnification Obligations.** The indemnification obligations under Sections 18 and 19 above will survive for a period of three (3) years following the date on which the applicable order for Product is submitted by the customer.
21. **Insurance.** Each customer ordering Product from PaxVax must maintain, for no less than three (3) years from the date of the last order submitted by the customer, the type and amount of insurance coverage that are normal and customary for entities similarly situated insuring the customer against any liabilities arising under the warranties and indemnities made by the customer herein as are reasonably insurable. Each customer must at all times comply with all insurance requirements of any governmental authority and applicable law.
22. **Termination.** In addition to all other rights of termination specified herein, PaxVax may terminate any orders submitted by a customer by notice to the customer, having immediate effect, (a) if the customer commits a material breach of any of the provisions of these Terms and Conditions or the order, and in the case of a material breach capable of remedy (it being agreed that non-payment is not subject to remedy), the customer fails to remedy the breach within ten (10) days of receipt of a notice giving particulars of the breach and requiring it to be remedied; (b) any voluntary or involuntary bankruptcy, insolvency, liquidation or similar proceeding or event with respect to the customer and its creditors, or the carrying on of the customer's business; or (c) if as a result of any action taken by a governmental authority, it becomes commercially impracticable or impossible for PaxVax (as determined in its sole discretion) to supply Product ordered by the customer.
23. **Consequences of Termination.** Upon the termination or expiration, for any reason, of an outstanding order submitted by a customer and/or these Terms and Conditions, (a) the customer will have no claim against PaxVax for compensation for loss of rights to use, administer, market or promote Product, loss of goodwill or any similar loss; (b) Sections 3, 4, 9, 11, 13 and 15-28 will continue in full force in accordance with their terms for a period of three (3) years from the date of termination (or any longer period as may be specified herein); and (c) all outstanding unpaid invoices will become immediately due and payable and PaxVax will have no further obligation to deliver Product. Termination or expiration of an outstanding order will be without prejudice to any rights that have accrued to the benefit of a party prior to the termination or expiration.
24. **Notice.** All notices, requests, demands and other communications which are required or may be given hereunder must be in written or electronic form, and will be deemed delivered (a) on the date of delivery when (i) delivered by hand or (ii) sent by reputable overnight courier maintaining records of receipt and (b) on the date of transmission when sent by facsimile or other electronic transmission during normal business hours with

confirmation of transmission by the transmitting equipment (if confirmed by delivery in a method described in clause (a) within 72 hours after its delivery by facsimile or other electronic transmission). All communications by PaxVax to a customer must be to the contact person listed at the "Ship To" address in the direct purchase account established by the customer. All communications by a customer to PaxVax must be to Chief Legal Officer, 900 Veterans Boulevard, Suite 500, Redwood City, CA 94063.

25. **Governing Law.** These Terms and Conditions will be governed and interpreted under the laws of the State of California, without giving effect to any conflicts or choice of law rule or principle that might otherwise require or permit the application of the laws of another jurisdiction. Any dispute arising hereunder will be subject to final and binding arbitration in San Mateo County, California before the American Arbitration Association under its then applicable rules for commercial disputes. The parties hereby agree to waive their right to have any dispute resolved in a court of law by a judge or jury.
26. **Entire Agreement.** These Terms and Conditions and each order for Product submitted by a customer contain all the terms which PaxVax and the customer have agreed to in relation to the purchase of Product. Each customer agrees that it is not relying on, and will have no remedy in respect of, any statement, representation, warranty, collateral contract or other assurance of any person or entity other than those expressly set out as a warranty in these Terms and Conditions and the applicable order, and that, except as otherwise provided herein, the only remedy available to it for breach of the warranties set forth herein is for breach of contract under these Terms and Conditions.
27. **Assignment.** Customers may not assign or delegate these Terms and Conditions or any of the rights or duties arising hereunder without the prior written consent of PaxVax and any attempt to so assign or delegate will be void and of no effect. PaxVax may, without the prior written consent of a customer, (a) assign or delegate these Terms and Conditions, together with any applicable order, and its rights and obligations hereunder and thereunder, or (b) perform any and all obligations under these Terms and Conditions and all applicable orders through any affiliate or third party designated by it.
28. **Modification to Terms and Conditions.** PaxVax may supplement, delete, modify, amend or otherwise change these Terms and Conditions at any time in its discretion, provided no such supplement, deletion, modification, amendment or change will apply to any past purchase of Product by a customer without the written consent of the customer.