**Terms and Conditions of Sale**

Updated: October 01, 2020

**ALL PRICES, PRODUCTS, PURCHASE ORDERS, INVOICES, AND OTHER SALES AND CREDIT TRANSACTIONS WITH WELLGISTICS, LLC (“WELLGISTICS”) ARE SUBJECT TO THESE CONDITIONS, WHICH MAY BE CHANGED WITHOUT NOTICE.**

**Agreement**

The following sets forth Wellgistics' Terms and Conditions of Sale (“**Conditions**”) as of the Effective Date. Buyer agrees to and is bound to these Conditions set forth in this Agreement by submitting a New Account Application, Purchase Order, or Invoice Payment to Wellgistics. Wellgistics may amend these Conditions from time-to-time without notice. In the event of a conflict between these Conditions and the terms of another written agreement signed by Wellgistics and Buyer, the conflicting terms of the later dated document control.

In addition to the statements made in the definitions below, these Conditions apply to any offer, acceptance, acknowledgment, invoice, proposal, quotation, or other similar document issued by Wellgistics in connection with a sale of Products to Buyer. These Conditions also apply to any Purchase Order or other similar document issued by Buyer in connection with the purchase of Products from Wellgistics, unless the parties expressly agree to the contrary in a writing signed by the Parties. Any terms or conditions stated by Buyer in any Purchase Order that are different from, or in addition to, the Agreement will be void and of no force or effect and are hereby expressly objected to and rejected. Wellgistics is not obligated to accept any Purchase Order from Buyer and all orders are subject to acceptance by Wellgistics. Once Wellgistics agrees to fill an order for Products, Buyer’s order cannot be cancelled without Wellgistics' written consent. All sales of Products to Buyer are nonreturnable and nonrefundable.

**Payment Terms**

Unless different terms are agreed to in writing by Wellgistics, all Buyer’s Purchase Orders issued to Wellgistics shall be prepaid via ACH bank transfer, wire transfer, cashier's check, or debit or credit card payment (with an additional convenience fee). Upon receipt of payment, Product shipment will be released to Buyer.

If Buyer pays via ACH bank transfer, or debit or credit card payment, Buyer agrees to allow Wellgistics to process future Purchase Orders via the same method and account. Buyer agrees to allow Wellgistics to store Buyer's financial account information to automatically process such orders. Buyer may update payment method via account settings. If Buyer fails to maintain a sufficient balance or credit line in the account that Wellgistics has on file and charges, Buyer will be solely responsible for any and all associated penalties, fees, or surcharges imposed by Buyer's financial institution.

If Buyer's Purchase Order is not prepaid, Buyer agrees to pay Wellgistics for the Purchase Order no later than ten (10) calendar days from the earlier of the shipping date or invoice date. Buyer further agrees to pay Wellgistics a late charge on any past due amounts at the rate of one and a half percent (1.5%) per month or the maximum amount permitted by law, whichever is less. A fifty-dollar service fee will be issued to Buyer’s account for each returned check.

In the event that Buyer is past due in payment of any amounts owed, whether invoiced or not, Wellgistics may place Buyer's account into credit hold status. While in credit hold status, any pending shipments, or additional Purchase Orders placed may be suspended at Wellgistics' sole discretion. Receipt by Wellgistics of payment in full for all outstanding balances, including any late fees or associated penalties, is required for Wellgistics to consider removing an account from credit hold status. Buyer shall furnish financial information requested by Wellgistics as reasonably required in order to establish Buyer’s eligibility for the extension of credit. Wellgistics reserves the right in its sole discretion to require payment in full prior to shipment of any Products.

Buyer will pay all costs and expenses (including attorneys’ fees) incurred by Wellgistics in collecting any amounts owed by Buyer. Buyer hereby waives any existing and future claims and offsets against payments due for the purchase of any and all Products and agrees to pay all amounts due regardless of any such offset or claim.

**Credit Terms**

It is not Wellgistics' general practice to offer credit terms to Buyers. However, credit terms may be extended on accounts whose credit standing has been approved by Wellgistics. Credit levels will be determined by Buyer’s ability to pay based on financial information, credit history, credit references, and Buyer's previous purchase patterns. If approved, credit may be extended up to a level adequate to meet the Buyer’s expected purchase patterns under stated terms of sale provided that the Buyer, in Wellgistics' discretion, can demonstrate ability to pay. Buyer must furnish information requested by Wellgistics for review to verify its ability to pay sums due, including but not limited to Buyer’s audited financial statements. Wellgistics reserves the right to require payment in advance of shipment or delivery in cash, or to suspend or cancel any further shipments until payment has been received, if in Wellgistics' sole judgment Buyer’s financial condition or creditworthiness has become impaired. Failure to furnish payment within ten (10) calendar days of demand by Wellgistics shall constitute a repudiation of the Agreement and any credit agreement, and in such event Wellgistics shall be entitled to receive reimbursement for its costs related to cancellation.

If credit is extended to Buyer, the maximum term for the payment of Product purchased by Buyer from Wellgistics on credit shall be forty-five (45) calendar days. Wellgistics may charge a service fee on Purchase Orders that are fulfilled on credit, in accordance with the following schedule: (i) up to two percent (2%) of purchase price on a fifteen (15) day credit term; (ii) up to three and a half percent (3.5%) of purchase price on a thirty (30) day credit term; and (iii) up to two five (5%) of purchase price on a forty-five (45) day credit term. If Buyer fails to pay Wellgistics by the expiration of the agreed upon credit term, the default interest rate of one and a half percent shall apply to the past due balance as stated above in the Payment Terms in addition to the service fee.

**Costs of Collection**

If Buyer fails to timely pay in accordance with these Conditions, Buyer shall be responsible to reimburse Wellgistics for all costs of collection. If Wellgistics retains or employs attorneys or other agencies in order to secure payment of any sums due from Buyer, or otherwise enforce these Conditions or any credit agreement, Buyer agrees to pay attorney and/or collection fees, costs, and any and all other related expenses in addition to all sums due.

**Shipment of Product**

All Products shall be shipped F.O.B. origin, whether originating in the continental United States, Puerto Rico, or such other shipping locations in the United States that may be designated by Wellgistics from time-to-time. Risk of loss of the Products shall pass to Buyer at the time the designated carrier takes possession of the Products from a Wellgistics' designated shipping location. Wellgistics does not make any guarantee regarding the delivery date or time. Shipments will be shipped to the shipping address designated by Buyer for delivery during normal business hours.

**Shipping and Handling Charges**

All Purchase Orders that are accepted and shipped, regardless of payment form, are subject to all shipping related charges and fees. All shipping and handling charges for orders outside of the Continental United States will be determined on a case-by-case basis. Wellgistics reserves the right to utilize the most cost eﬀective solution and/or carrier to ensure delivery according to these Conditions. Any increase to shipping cost based on the request of the Buyer for specialized services, or request of non-primary Wellgistics carrier/vendor or upgrade from ground to expedited shall be invoiced separately and be paid for by the Buyer. Buyer may provide Wellgistics with Buyer’s shipping account number to use Buyer’s shipping vendor.

**Storage and Handling**

Subject to the terms of any applicable Consignment Agreement between the Parties, Buyer will at all times handle, maintain, store, transport, deliver and otherwise manage and distribute the Products supplied by Wellgistics in strict accordance with all handling, maintenance, storage, transportation, delivery and distribution requirements as labeled on the Products or as specified by Wellgistics or the third-party manufacturer and in strict accordance with all applicable federal, state and local laws, rules, regulations and practices. Buyer shall keep and maintain for the period of time required by applicable laws (but at least for a five-year period) detailed records and make such records available for inspection by Wellgistics during normal business hours upon reasonable advance notice.

**Taxes**

The prices Wellgistics establishes for its Products do not include any applicable taxes of any kind, including (but not limited to) sales, use, value-added, excise or withholding taxes or any customs, duties or fees, which Buyer shall be responsible for paying. Buyer shall pay when due all taxes and governmental charges of any kind including without limitation all sales, use, personal property, ad valorem, value added, stamp or other taxes, levies, customs duties or other similar charges or fees (other than any taxes based on Wellgistics' net income), imposed by any government or government agency on the Products (or the use thereof) as a direct or indirect result of the transactions hereunder (“**Tax**”). Buyer will indemnify and hold Wellgistics harmless against any such taxes, duties or fees and shall reimburse Wellgistics upon demand for any Tax owed by Buyer that is paid by Wellgistics, whether such Tax is designated, levied or based on transactions hereunder.

**Security Interest**

Subject to the terms of any Consignment Agreement or Credit Agreement between Buyer and Wellgistics (if applicable), Buyer hereby grants and Wellgistics hereby retains, a purchase money security interest and lien in and to the Products, wherever located, and all replacements or proceeds of the Products, until the invoice for the applicable Products is paid in full, including any late charges and costs of collection. Buyer consents to Wellgistics' use of this Agreement, as well as Product invoices, as financing statements for protecting this security interest and hereby appoints Wellgistics as Buyer’s agent for service of process.

**DISCLAIMER OF WARRANTY**

**Buyer acknowledges that Wellgistics is a wholesale distributor of the Products and is not a manufacturer of the Products. Buyer acknowledges that Wellgistics is not liable for any illness or condition resulting from compromised or damaged Products or due to improper or inappropriate administration of the Products.**

**WELLGISTICS MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THIS AGREEMENT OR THE PRODUCTS, AND WELLGISTICS EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES REGARDING THIS AGREEMENTAND THE PRODUCTS AND ANY OTHER MATERIALS OR INFORMATION, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT; PROVIDED, HOWEVER, THAT TO THE EXTENT IT IS**

**LEGALLY AUTHORIZED TO DO SO, WELLGISTICS WILL ASSIGN OR OTHERWISE “PASSTHRU” TO BUYER ANY WARRANTIES PROVIDED TO WELLGISTICS BY THE THIRDPARTY MANUFACTURER OF THE PRODUCTS.**

**LAWS FROM TIME TO TIME IN FORCE IN THE RELEVANT MARKET MAY IMPLY WARRANTIES WHICH CANNOT BE EXCLUDED OR WHICH CAN ONLY BE EXCLUDED TO A LIMITED EXTENT, IN WHICH CASE, WELLGISTICS LIMITS ITS WARRANTIES AND LIABILITY TO THE MAXIMUM EXTENT PERMITTED BY LAW.**

**IN NO EVENT WILL WELLGISTICS OR ANY OF ITS SUPPLIERS, OR AGENTS BE LIABLE TO BUYER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES FOR ANY ACT OR OMISSION ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PRODUCTS OR WITH THE SALE, HANDLING, MAINTENANCE, STORAGE, TRANSPORTATION, DELIVERY, USE OR DISTRIBUTION OF THE PRODUCTS, INCLUDING WITHOUT LIMITATION ANY LOSSES, EXPENSES, OR DAMAGES INCURRED BY REASON OF LOST REVENUES OR PROFITS, COSTS OF SUBSTITUTE PRODUCTS, EXPENSES OR LOSSES, EVEN IF FORESEEABLE OR IF WELLGISTICS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**LIMITATION OF LIABLITY**

**Wellgistics shall not be liable to Buyer or to any third party for any special, indirect, incidental or consequential damages nor for any injury to persons or property, under any claim or theory of recovery. The entire liability of Wellgistics to Buyer, and the sole and exclusive remedy of Buyer, for any claim or cause of action arising hereunder (whether in contract, tort, or otherwise) will not exceed the purchase price paid for the Products which are the subject of such claim or cause of action. Wellgistics will not have any tort liability to Buyer arising from this Agreement including claims relating to negligence or defects in the Products. Each party recognizes and agrees that the warranty disclaimers and liability and remedy limitations in this Agreement are material to this Agreement and that they have been taken into account and reflected in determining the consideration to be given by each party under this Agreement and in the decision by each party to enter into this Agreement.**

**Indemnity**

Buyer agrees to indemnify, defend and hold harmless Wellgistics and its employees, officers, directors, and agents from and against any and all losses, claims, suits, demands, damages, costs, expenses, attorneys’ fees, fines, and penalties that result from or arise out of (i) an actual or alleged defect in the Products; (ii) any misconduct, negligence, misrepresentation, error or omission on the part of Buyer or Buyer's employees, subcontractors or agents; and (iii) any breach by Buyer or default of Buyer of any of its representations, warranties or obligations under this Agreement.

**Returns**

All sales are FINAL. Wellgistics only accepts returns for: (1) received damaged, (2) manufacturer recall, and (3) other circumstances to be approved by Wellgistics management.

**Cancellation of Purchase Order(s)**

Wellgistics shall have the right hereunder to cancel all or part of any Purchase Order(s) to which these Conditions of Sale apply after its acceptance of the Purchase Order(s) without penalty or cancellation charge.

**Permits, Licenses, and Compliance with Law**

Unless otherwise agreed in writing, Wellgistics agrees that it will restrict the use of the Products to the United States, excluding its territories. Buyer represents and warrants that is has in place and will maintain all necessary licenses, permits, certificates, and other requisite documents in connection with purchasing, handling, maintaining, storing, transporting, delivering and otherwise managing and dispensing the Products purchased under this Agreement. Buyer shall comply with all federal, state and local laws, rules and regulations applicable to the purchase and use of the goods. In addition, Buyer shall obtain all permits and licenses required by federal, state or local authorities in connection with any of the goods and shall bear all expenses in obtaining such permits and licenses or in complying with any related rules, regulations, ordinances and statutes. Buyer represents and warrants that all locations designated as “ship-to” locations shall have all necessary licenses, permits, certificates and other authorizations required to receive shipment of Products from Wellgistics legally.

**Medicare/Medicaid Disclosure**

If and to the extent any discount, credit, rebate or other purchase incentive is paid or applied by Wellgistics with respect to the goods purchased hereunder, such discount, credit, rebate or other purchase incentive shall constitute a "discount or other reduction in price," as such terms are defined under the Medicare/Medicaid Anti-Kickback Statute, on the goods purchased by Buyer hereunder. Wellgistics and Buyer agree to use their best eﬀorts to comply with any and all requirements imposed on sellers and buyers, respectively, under 42 U.S.C. § 1320a-7b(b)(3)(A) and the "safe harbor" regulations regarding discounts or other reductions in price set forth in 42 C.F.R. § 1001.952(h). In this regard, Buyer may have an obligation to accurately report, under any state or federal program which provides cost or charge based reimbursement for the goods or services covered by these Conditions of Sale, the net cost actually paid by Buyer.

**Relationship**

The Parties are acting independently and shall at all times act as an independent contractor of each other in the sale of the Products and are not partners, joint venturers, agents, or legal representatives or agents of each other for any purpose. Neither party shall have any right or power to act for or bind the other, in any respect, to pledge its credit, to accept any service of process upon it, or to receive any notices of any nature whatsoever.

**No Assignment**

Wellgistics may assign this Agreement, its duties, or its benefits at any time without notice. Buyer may not assign this Agreement, its duties, or its benefits to anyone else without Wellgistics' prior written consent.

**Amendments**

These Conditions are subject to revision, amendment or supplement by Wellgistics from time to time, and such revision, amendment or supplement shall be binding upon Buyer.

**Entire Agreement**

Subject to the definition of Agreement below, this Agreement is the complete and entire agreement between Wellgistics and Buyer regarding the purchase of Products. This Agreement supersedes any prior or contemporaneous discussions, communications and agreements, including but not limited to representations made in Wellgistics sales literature and advice given to Buyer by Wellgistics or any agent or employee thereof that may have been made in connection with Buyer's purchase of any Products from Wellgistics. This Agreement is subject to change without notice by Wellgistics. This Agreement is further subject to modification as Wellgistics may deem necessary or appropriate to comply with federal and/or state laws, rules and regulations, FDA guidelines and any other restrictions applicable to the Product and transactions related thereto.

**Disputes**

Governing Law – These Conditions, this Agreement and all other questions arising hereunder or pursuant to the parties' transaction shall be governed and determined by the laws of the State of Florida, excluding its conflict of laws provisions.

Waiver – Wellgistics may waive (or forgive liability) of any breach (or failure) by Buyer to abide by any of these Conditions. However, no waiver is valid unless it is in writing and signed by Wellgistics. Also, waivers apply only to specifically identified failures and do not give Buyer permission to breach Conditions at other times.

Internal Resolution – If you have concerns or claims with respect to your Purchase Orders or these Conditions, email [orders@wellgistics.com](mailto:orders@wellgistics.com). Wellgistics will investigate and attempt to promptly resolve any complaints.

*Disputed invoices.* If Buyer disputes an invoice in good faith, Buyer shall promptly notify Wellgistics in writing of the grounds for the dispute and pay any undisputed portion of the invoice. The Parties shall use commercially reasonable efforts to resolve the matter within fifteen (15) calendar days of such notice.

*Claims for shortage, defects, or product damage.* All receiving discrepancies (including Product shortage, defect or damage) must be reported to Wellgistics (via phone, e-mail, or fax) in accordance with the following: (i) Buyer must report any claims for shortage, defects or damage to any refrigerated Products upon receipt of shipment from Wellgistics; and (ii) on all other Products within forty-eight (48) hours of receipt of shipment. If Buyer believes any of the Products contain a manufacturing defect, Buyer must contact the manufacturer directly. All Products are subject to Wellgistics**’** return policy outlined in these Conditions.

*Force majeure.* Wellgistics may suspend deliveries of Product under this Agreement and shall be released from its obligations if, and to the extent that any delay or failure to perform such obligations, is due to fire or other casualty, product or material shortages, strikes or labor disputes, transportation delays, change in business conditions (other than insignificant changes), manufacturer out-of stock or delivery disruptions, acts of God, seasonal supply disruptions, government action, including the inability to obtain quota for controlled substance products, or other causes beyond the reasonable control of Wellgistics. In addition, Wellgistics may allocate available Product among its customers from emergency supply inventories and reduce or otherwise adjust Buyer’s orders accordingly without liability to Buyer by notifying Buyer of the same.

Arbitration – If your complaint cannot be resolved through our internal process, you agree to resolve your complaint through arbitration. If arbitration is necessary, it will be conducted by telephone and email, and if it must be done in person, it will be conducted in Lakeland, Florida. The arbitration will be conducted an arbitrator from the American Arbitration Association, and under the rules of commercial arbitration of that association, to the extent they’re not inconsistent with these Terms. Both parties will equally share the cost of arbitration. Attorney fees will be awarded to the prevailing party. All decisions of the arbitrator will be final and binding on both parties and enforceable in any court of competent jurisdiction. For additional information you may visit [www.ADR.org](http://www.adr.org/).

Court – If, for whatever reason, arbitration is unenforceable, lawsuits must be brought before a court in the State of Florida. Attorney fees will be awarded to the prevailing party.

Severability – If, for whatever reason, an arbitrator or court of competent jurisdiction finds any part of these Conditions to be unenforceable, all other parts will remain in force, and a valid provision which most closely approximates the intent and economic effect of the invalid provision shall be substituted for the invalid provision.

Rights and Remedies – The rights and remedies expressly provided to Wellgistics herein are not exclusive, but are cumulative and in addition to any other remedies at law or equity.

Limitations Period – With the exception claims by Wellgistics arising from unpaid invoices, any claim(s) between the Parties arising out of this Agreement shall be brought within one year after the accrual of such claim(s). Any such claims not brought within one year of accrual are waived and forever barred.

**Updates**

Buyer has a responsibility to review these Conditions periodically. Wellgistics may revise these Conditions at any time. If Wellgistics makes a change to these Conditions that, in its sole discretion, is material, Wellgistics will update this webpage and may send an email to the address associated with Buyer's account. By continuing to place orders on this website or Wellgistics' mobile application after those changes become effective, Buyer agrees to be bound by those changes regardless of whether Wellgistics has issued an email notification.

**Definitions**

As used in these Terms and Conditions of Sale:

**“Agreement”** means the version of Wellgistics’ Conditions as of the Effective Date, together with the terms of any credit application and/or credit agreement executed by Buyer and any other agreements, Purchase Orders, invoices signed (or accepted) by Wellgistics and Buyer or oral agreements relating to Products sold or distributed by Wellgistics to Buyer;

**“Buyer”** means any person, firm, company or entity to whom Wellgistics actually or prospectively supplies or distributes any Products, including (but not limited to) New Account Applicants;

**“Conditions”** means the terms and conditions set out herein (and as amended from time to time by Wellgistics) and any other conditions and/or terms of sale set out or referred to in Wellgistics’ acknowledgement of order;

**“Effective Date”** means later of the Revision Date, the date of Buyer’s execution of the New Account Application or the Buyer’s last purchase transaction with Wellgistics;

**“Invoice Payment”** means any payment submitted by Buyer to Wellgistics for the payment of Products by Buyer from Wellgistics, whether or not Buyer was invoiced in writing or orally;

**“New Account Application”** means the document signed by a Buyer required to open an account with Wellgistics in order for Buyer to purchase Products;

**“Parties”** means the Buyer and the Wellgistics collectively. **“Party”** means either Buyer or Wellgistics, as may be determined by its context;

**“Products”** means any products or goods Wellgistics agrees to sell or distribute to the Buyer (including any part or parts of them);

**“Purchase Order”** means any order, whether written or oral, submitted by Buyer to Wellgistics for the purchase of Products;

**“Revision Date”** means the above stated date when these Conditions were last updated; and

**“Wellgistics”** means Wellgistics, LLC, a Florida limited liability company.