

XENERGY HEALTH, LLC
STANDARD TERMS AND CONDITIONS OF PURCHASE
Revised January 11, 2023

General; Acceptance

1. Customer (also referred to at times as “You”) and Xenergy Health, LLC (“Supplier”) (collectively “the Parties”) desire to enter into an agreement by which Customer purchases from Supplier the merchandise described on Customer’s purchase order (the “Purchase Order”). Supplier has agreed to sell Customer the merchandise described on the Purchase Order provided Customer agrees to: a) all terms set forth on Supplier’s invoice to Customer for the merchandise set forth in the subject invoice (the “Merchandise”), and b) these Terms & Conditions (“T&Cs”), which are incorporated herein. Customer agrees that each and every shipment of Merchandise shall be governed exclusively by the terms of the T&Cs and the subject invoice. Any provisions in the Purchase Order, Customer’s subsequent purchase orders, billing statements, acknowledgment forms or similar documents which are inconsistent with the provisions of the T&Cs or any invoice from Supplier shall be deemed waived by Customer and are of no force or effect.

Delivery and Freight

2. All delivery dates quoted are estimates only. All freight and delivery charges from Supplier’s warehouse shall be paid as a separate item and are not included in Supplier’s price unless specifically so stated. Supplier has option to make partial deliveries and Customer shall accept these unless otherwise specifically agreed to by Supplier.

Payment and Risk of Loss

3. The purchase price for the Merchandise shall be paid in accordance with the terms set forth in the subject invoice from Supplier to Customer, as well as these T&Cs. In the event Customer fails to fulfill the terms of payment, or in case Supplier shall have any doubt at any time as to Customer’s financial responsibility, Supplier may decline to make further deliveries, except upon receipt of cash or satisfactory security. Past due balances are subject to a late payment charge of 1.5% per month, or the maximum amount permitted by applicable law, whichever is less. Customer shall pay all costs, fees, including attorney’s fees, and expenses incurred by Supplier in collecting monies due or to become due hereunder, regardless of whether a lawsuit is filed. All sales shall be deemed to take place at the applicable Supplier’s distribution facility, designated 3PL, or factory warehouse, and both transfer of title for shipped/purchased Merchandise and the risk of loss for said Merchandise shall be deemed to take place at the applicable Supplier’s distribution facility, designated 3PL, or factory warehouse.

Returns

4. All sales will be deemed final. No returns shall be accepted. Returns received will be refused and no credit shall be given.
5. In the case of defective Merchandise, Customer must contact Supplier within 10 days of receipt to obtain a return authorization number. All defective Merchandise must be returned to Supplier's designated warehouse within 30 days of receipt. The Customer will receive a full refund (including applicable freight).

No most-favored terms

6. In the event that Customer's purchase order, terms, and/or any other contract document contains a "most-favored terms" provision, Customer acknowledges that such a term is not enforceable against Supplier. Supplier expressly disclaims any obligation to provide Customer with the same or better terms than offered to any of its other customers.

Invoice Adjustments

7. Invoice Adjustment Policy: Customer must refuse all damaged Merchandise or Merchandise shipped in error at the time of receiving said Merchandise. Customer must note all shortages/damage and other discrepancies at time of the Merchandise's delivery and include: 1) an exact count of the Merchandise that was not received or was damaged, 2) Customer's or consignee's signature, and 3) confirmation of Merchandise's delivery. If Customer or consignee signs a delivery receipt with no exceptions, it acknowledges receiving a complete shipment. Customer must report all receiving discrepancies to Supplier's service department within 72 hours of Merchandise delivery date (phone 855-797-7676 x4; email sales@xenergy.io. Failure to fulfill terms of this policy may result in invoice adjustment being declined. Failure of Supplier to receive written notice of any such claim within the applicable time period shall be deemed an absolute and unconditional waiver by Customer of such claim irrespective of whether the facts giving rise to such claim shall have been discovered or whether processing, further manufacture, other use or resale of the Merchandise shall have taken place.

Indemnification

8. Indemnification. Customer agrees to indemnify and hold Supplier harmless from any claim brought by Customer's customer against Supplier.

Limits of Liability

9. It is understood and agreed that Supplier's liability whether in contract, tort, warranty, negligence or otherwise shall not exceed the amount paid by

Customer. Under no circumstances shall Supplier be liable for special, indirect, punitive, or consequential damages. The price stated on the subject invoice for the purchased Merchandise is a consideration limiting Supplier's liability. No action, regardless of form, arising out of the transactions under each invoice may be brought by Customer more than one year after the date of each invoice.

Warranty

10. WARRANTIES. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT THE SUPPLIER SHALL NEVER BE HELD TO BE OBLIGATED OR LIABLE UPON OR UNDER ANY GUARANTIES OR WARRANTIES, EXPRESS OR IMPLIED, STATUTORY, BY OPERATION OF LAW, OR OTHERWISE INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS UNDER ANY STATE'S UNIFORM COMMERCIAL CODE IN ANY MANNER OR FORM. CUSTOMER IS MAKING THIS PURCHASE AFTER AND IN RELIANCE ON ITS FULL AND COMPLETE EXAMINATION OF THE MERCHANDISE, AND NOT BY REASON OF ANY REPRESENTATION AS TO ITS MERCHANTABILITY, SPECIFIC ATTRIBUTES OR OTHERWISE, MADE BY OR ON BEHALF OF THE SUPPLIER.

In the event that the actual manufacturer of the Merchandise offers a warranty on the Merchandise, Supplier agrees to assign all of its right, title, and interest in said warranty to Customer and Customer may pursue the same as Customer's sole and exclusive remedy for alleged breach of warranty of any kind.

No Waiver

11. Supplier's failure to insist upon performance of any of the terms and conditions herein, or to exercise any right or privilege, or Supplier's waiver of any breach hereunder shall not thereafter waive any of the terms, conditions or provisions, whether of the same or similar type. The invalidity, in whole or in part, of any provisions hereof shall not affect the validity of any other provision.

Assignment

12. This Agreement is not assignable or transferable by Customer, in whole or in part, except within the written consent of Supplier, which consent may be withheld.

Merchandise Allocation

13. When in the opinion of Supplier there is a period of shortages of supply of Merchandise for any reason, Supplier may allocate its available supply among any or all of its various customers upon such basis as Supplier shall

deem fair and practicable, with no liability on its part for failure to deliver the quantity or any portion therein specified to Customer. If questions, issues, or concerns arise please call Supplier's sales department at sales@xenergy.io.

Customer Responsibilities

14. Customer may not list or resell any of Supplier's Merchandise on any online 3rd party marketplace without Supplier's prior written consent.
15. If Customer is an authorized distributor for Supplier, and has a current Distribution Agreement with Supplier, Customer agrees to adhere to all of the obligations described in its Distribution Agreement. Additionally, if Customer is a reseller of Supplier's products, Customer will adhere to the following terms and conditions:
 - a. Maintain accurate and up-to-date company information and disclose all retail locations that carry Supplier throughout the term of your reseller relationship with Supplier, upon Supplier request and provided in writing within 3 days. Qualifying retail locations can only be one of the following: your physical brick & mortar store(s), your commerce-enabled website(s), or temporary storefronts (events, trade shows, pop up stores, etc.)
 - b. You must provide unit sell-thru information by SKU and by approved retail location upon request. Supplier reserves the right to perform an audit of financial statements pertaining to Supplier sales or the business operations (conduct) to ensure compliance with this policy.
 - c. You must comply with Supplier's Intellectual and Branding Guidelines and represent yourself as a Xenergy Authorized Reseller in all online advertising & sales collateral. Setting up businesses, registering domain names, or social media usernames that contain any of Supplier's trademarks is strictly prohibited. To ensure compliance with Supplier's policies, you must only use approved marketing materials for all Supplier products. You can request this by email to sales@xenergy.io.
 - d. You must not buy Supplier products from other retailers, or from other sources not explicitly endorsed by Supplier.
 - e. You may not alter original Supplier packaging in any way prior to reselling Supplier products. Removing Supplier products from packaging and reselling Supplier products in a different packaging or under a different name is strictly prohibited.
 - f. You must be able to use the standard set of Supplier-supplied data in product data feeds that you distribute to 3rd party advertising venues unless prior written permission is obtained from Supplier.
 - g. You must not re-SKU or bundle Supplier products in your online assortments & data feeds without receiving prior written permission from Supplier.

- h. You agree to reasonably cooperate with Supplier in preventing unauthorized exportation of Supplier's Products. For Supplier products which incorporate an individualized numerical designation (e.g. serial number) and which are sold in bulk, defined as four (4) or more units in a single transaction, or ten (10) or more units purchased by the same individual within thirty (30) days ("Serialized Bulk Products"), you shall endeavor to request the following information: customer name, customer address, customer phone, product serial numbers, and dates of transaction. The customer information is not required to be transferred to Supplier; however, it should be used to identify suspicious purchase patterns. In the event the customer refuses to provide such information, you should reduce the transaction quantity to below the applicable Serialized Bulk Products threshold.
- i. You will not advertise, market, display, or demonstrate non-Supplier products together with Supplier products in a manner that would create the impression that the non-Supplier products are made by, endorsed by, or associated with Supplier.
- j. You, and each of your customers/clients, must only take orders via publicly accessible ecommerce enabled web pages hosted on approved websites owned and operated by you. Selling on 3rd party sites domestic or international sites (eBay, Amazon, Alibaba, etc.), dropship accounts (Buy.com, Newegg.com, Overstock.com, etc.), classified sites (Craigslist.com, Facebook Marketplace, etc.) or direct messages on forums both domestic or international is strictly prohibited. You will include this section 17(j) in your terms & conditions/contract with each of your customers/clients and should there be a breach of this provision by any of them you agree to use your best efforts to cause them to comply with it."
- k. You must restrict your customer-order shipments to shipping addresses located within the country where Supplier has delivered its products to you. This excludes fulfillment of orders to international end users via a freight forwarder located within the country as defined above. You agree to distribute products only to the country of purchase or initial shipment. Exporting of products to countries requires express permission of Supplier on a case-by-case basis. At no time shall Supplier or its affiliates be liable for any or all claims arising from the importation of products not specifically authorized by Supplier. You assume all responsibility and hold Supplier and its affiliates harmless from any claim brought by any third party who purchased Supplier product inconsistent with this provision.
- l. You must ensure Payment Card Industry ("PCI") compliance for all approved commerce enabled websites owned & operated by your company.
- m. You must publish and maintain a publicly accessible privacy policy.
- n. You must ensure industry-standard e-commerce security and fraud protection measures are in place, including two-factor authentication, authorized territory shipping restrictions, and customer fraud resolution procedures.

- o. Supplier product videos are the property of Supplier. Supplier grants imbed rights to you only for use on your corporate ecommerce website, and not on any 3rd party websites at any time. Embedded videos must be embedded in their entirety and may not be edited. All videos embedded must be on accessible, family friendly websites and available free of charge.
- p. Supplier wants to engage with its distributors through social media. Supplier encourages following/liking and will reciprocate in kind. Supplier content must be shared and may not be copied and pasted without violating copyright guidelines. You acknowledge and agree that you will not take any action that is in conflict with our rights in or ownership of Supplier. You will not disparage, or post anything that creates negative goodwill about any products, brands, content, and/or person's affiliated with or employed by Supplier.
- q. You may not conduct any public relations campaigns that cite, show, or communicate anything about Supplier without Supplier's written permission, which permission can be refused. In no case will you take any action that is in conflict with Supplier's rights in or ownership of any Supplier brand, trademark copyright, or other intellectual property right.

Force Majeure

16. Force Majeure – Notwithstanding anything to the contrary contained herein, neither party shall be liable for any delays or failures in performance resulting from acts beyond its reasonable control including, without limitation, acts of God, acts of war or terrorism, pandemics, shortage of supply, breakdowns or malfunctions, interruptions or malfunction of computer facilities, or loss of data due to power failures or mechanical difficulties with information storage or retrieval systems, labor difficulties or civil unrest. Notwithstanding the foregoing, in the event of such an occurrence, each party agrees to make a good faith effort to perform its obligations hereunder.

Governing Law

17. Governing Law & Forum. Any dispute between the Parties shall be governed by California State law, without giving effect to any conflict of law provision. Should either party have a dispute they first agree to resolve it in a face-to-face meeting of the principals of the companies. If they are unable to settle it within ten (10) days of a written request by one party to negotiate face-to-face then either party may request of the other a mediation, which the parties agree will take place within forty-five (45) days after one party requests mediation from the other. The parties shall select a mutually agreeable mediator and if they cannot agree to one within three (3) business days they shall ask Judicate West (San Diego office) to appoint a mediator for them. If the dispute is not resolved by mediation within sixty (60) days of a request by one party to mediate, then the Parties agree to submit the matter

to binding arbitration through Judicate West (San Diego office). The Parties shall have five (5) business days to select a mutually agreeable arbitrator and if they do not do so then Judicate West shall appoint one. The prevailing party in any dispute shall be entitled to recover its attorneys' fees and costs. The Parties agree that the arbitration award may be entered exclusively in the San Diego County Superior Court.

Confidentiality

18. Confidentiality. Customer agrees to keep the terms of its agreement with Supplier (including, but without limitation, all information found on each invoice and these T&Cs) confidential. It will not disclose them to any third party except for Customer's accounting and legal professionals.

Other

19. No Agency. Customer acknowledges that it is not an employee, agent, or independent contractor of Supplier. Customer has no authority to Supplier.

20. Entire Agreement. Each invoice and these T&Cs constitute the entire agreement between the Parties. No modification of any invoice or these T&Cs is valid and enforceable unless it is in writing signed by an officer of Supplier.

21. Effective Date. The effective date for the sale of Merchandise under each invoice shall be the actual date of each invoice. All references to dates in these T&Cs shall be calculated using the subject invoice date.

22. The Agreement is effective on the earlier of Customer's written or verbal acceptance or commencement of performance of the Invoice/Order. The Purchase is expressly conditioned on Customer's acceptance of these T&Cs, and Customer's receipt of any Merchandise from Supplier constitutes conclusive and incontestable proof of Customer's agreement to all the terms in these T&Cs.

Titles and Headings

23. Titles and headings to sections herein are inserted for the convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.