

## GENERAL TERMS AND CONDITIONS OF SALES AND SUPPLY

### 1. DEFINITIONS

For the purpose of these General Terms and Conditions of Sale and Supply (hereinafter the "Conditions"), the following terms shall have the meaning set forth below:

- **"Seller" or "Xenics"**: Xenics USA, Inc., with its registered office at Cummings Center 600, Suite, 166-Y, Beverly MA 01915-6194, United States of America, acting through its duly authorized representative.
- **"Customer"**: the party who purchases the Products and/or Services;
- **"Products/Services"**: any products or services of Seller, purchased by Customer and to be supplied by Seller.
- **"Force Majeure"**: an inevitable and unforeseen event.

### 2. APPLICABILITY

These Conditions shall apply to each order, sale and/or supply of Products/Services by Xenics to Customer. No other terms or conditions requested by the Customer are applicable, unless if explicitly accepted by Xenics in writing. A purchase order shall only be binding on Xenics upon Xenics' confirmation in writing of the order.

The Conditions herein complete the Seller's commercial offer they are attached to and the latter prevail over the Conditions in case of contradiction or conflict. Acceptance of the Seller's offer implies the endorsement of the following Conditions, which shall prevail over any other terms and conditions put forward by the Customer.

By sending an order to the Seller, the Customer is deemed to have entirely accepted these Conditions.

### 3. PRICE

The price to be paid by the Customer for the Products and/or Services, is indicated in the order confirmation. Unless otherwise agreed upon, the prices are net, excluding all expenses and all taxes, fees, tariffs, or charges of any nature whatsoever, imposed currently or in the future by any federal, state, or other governmental authority upon or with respect to the sale, purchase, delivery, shipment, storage, processing, use or consumption of any of the Products and/or Services covered hereby. In the event Xenics is required to pay any such tax, fee, tariff or charge, Customer shall reimburse Xenics. All prices are in US Dollars. The offer is valid for a fluctuation of the currency rate €/ \$ lower than or equal to 3 %. The reference currency rate is the one at the date of the offer.

The prices are:

- Exclusive from any taxes and duties.
- Inclusive of the relevant packing.
- Based on current economic and financial conditions at the date of the quotation.

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#### **4. PAYMENT TERMS**

All invoices are payable within thirty (30) calendar days from the invoice date without any discount, suspension or set-off. If payment of any amount due is not made by the due date, Xenics shall be entitled, without prejudice to any other rights, to charge, without any prior notice required, interest on any overdue amount until the day of settlement. The interest rate on the overdue amount is 1,5% per month. All collection expenses incurred by Xenics (including attorney's fees) shall be reimbursed by the Customer.

#### **5. DELIVERY AND SHIPMENT**

The Products and/or Services will be imported by Xenics USA, Inc. and delivered Ex Works Xenics' premises in Beverley Massachusetts (per Incoterms 2010). The delivery schedule serves as an estimate only and is based upon prompt receipt from Customer of all necessary information. Xenics shall use its reasonable efforts to deliver the Products and/or provide the Services according to the proposed time schedule. However, failure by Xenics to deliver within the proposed schedule, for whatever reason, shall not entitle Customer to terminate the Agreement, except as set forth in Section 16 "Force Majeure" of these Conditions, or to claim liquidated or other damages. Seller shall not be liable for delay in delivery or failure to perform the Services attributable to causes beyond its control or occasioned without its willful misconduct or gross negligence. In the event of any such delay or failure, the date of delivery shall be deferred for a period equal to the time lost by reason of the delay or failure.

#### **6. TRANSFER OF RISK AND PROPERTY**

All risk of loss or damage is transferred from Xenics to Customer upon delivery at Xenics' premises in Beverley Massachusetts.

Without prejudice to the Customer's obligation to pay on time and in accordance with the provisions detailed herein, title to the Products will remain with Xenics until Customer has fulfilled its financial obligations in connection with said Product(s).

#### **7. INSPECTION AND ACCEPTANCE**

Customer shall examine the Products promptly upon delivery thereof. Within fifteen (15) calendar days of such delivery, Customer shall notify Xenics in writing of any defect concerning the Product delivered. If Seller has not received any notice from Customer within said 15-day period, the Products will be deemed accepted.

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## 8. WARRANTY

**(a) PRODUCT WARRANTY.** Xenics warrants to Customer the Product delivered by Xenics hereunder shall be free from defects in material and workmanship when used under normal operation conditions for a period of **twenty-four (24) months** following the delivery of the Product, except for Stirling Cooled engines for which it is twenty-four (24) months or 3000 operating hours, whichever occurs first. Customer shall notify Xenics in writing of all defects not detectable at the time of the inspection as stated above despite all reasonable care ("hidden defects") no later than ten (10) calendar days following detection of hidden defects. Failure to notify Xenics within the time periods stated above shall void the warranty. Xenics' maximum liability under this warranty is limited to the obligation to either repair, replace or, at its sole option, to credit Buyer's account up to the purchase price. Xenics shall not be liable under this warranty (i) for any defect caused by force majeure, (ii) for any defect caused by normal tear and wear, and (iii) where the Product is subjected to abnormal usage or where the defects are caused by accident, neglect, misuse, unauthorized alteration or other improper actions on the part of Customer or any third party (iv) if the Product has been incorporated by or on behalf of Customer or by a third party into another product.

**(b) SERVICE WARRANTY.** Xenics warrants the Services are provided in a professional manner, taking into account the actual status of knowledge in the field concerned. Customer shall immediately notify Xenics in writing of any defect concerning the Services. Failure to notify Xenics within ten (10) days following the date of delivery of the services shall void the warranty. Xenics shall, at its sole discretion, either re-perform the defective Service or refund the Customer on a pro-rata basis, the Service fee paid for the defective Service.

THE FOREGOING WARRANTIES CONSTITUTE XENICS' ENTIRE WARRANTY AND IS EXCLUSIVE OF ALL OTHER WARRANTIES INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

## 9. LIMITATION OF LIABILITY

Xenics is not liable for any damage arising from improper use or incorrect maintenance of the Products. Xenics is not liable for any damage that occurs after modifications, incorporations or repairs by or on behalf of Customer or any third party. Xenics' liability for the Products delivered by Xenics to Customer is in any event limited to the direct damages suffered by the Customer as a result of willful misconduct or gross negligence by Xenics or its employees. XENICS' LIABILITY FOR ANY CLAIM OF ANY KIND, WHETHER BASED IN CONTRACT, IN TORT OR OTHERWISE FOR ANY EXPENSE, INJURY, LOSS OR DAMAGE ARISING OUT OF OR IN CONNECTION HERETO SHALL IN NO CASE EXCEED THE PRICE PAID BY CUSTOMER FOR THE PRODUCTS/SERVICES WHICH GIVES RISE TO THE CLAIM WITH AN OVERALL MAXIMUM OF 1 500 000 USD. IN NO EVENT SHALL XENICS BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER RESULTING FROM XENICS' PERFORMANCE OR FAILURE TO PERFORM OR THE PERFORMANCE OR USE OF THE PRODUCTS/SERVICES SOLD, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF USE AND LOSS OF GOODWILL.

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## **10. INTELLECTUAL PROPERTY RIGHTS, TRANSFER OF RIGHTS AND CONFIDENTIALITY**

Except as required by law, Customer will not disclose to any third party, except to its own employees, on a need-to-know-basis, any information or data of a confidential nature disclosed by Xenics ("Confidential Information"), nor will it use such Confidential Information other than in furtherance of a business relationship with Xenics. Any permitted disclosure shall include the requirement that the person to whom such Confidential Information is disclosed shall be subject to the same obligations of non-disclosure and restricted use, as contained herein. All intellectual property rights in and to the Products are and remain the exclusive property of Xenics. No patent or other intellectual property right, title, or license is granted to Customer, except as otherwise agreed. The Products/Services may not be reproduced, reverse-engineered, or copied either in whole or in part without the prior, written consent of Xenics.

To the extent that Intellectual property rights ("IPR") are embedded in a Product, the sale of such Product shall not constitute a transfer of ownership rights or title in the IPR to Customer, but shall imply a non-exclusive, non-sublicensable, and non-transferable license under Seller's IPR to Customer to use such IPR always in association with the Product and for limited purposes of integration, operating, and using the Product only.

## **11. GOVERNING LAW AND DISPUTE RESOLUTION**

These Conditions shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts. All disputes shall be exclusively settled by the courts sitting in Massachusetts. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the sale of Products/Services by Xenics to Customer under these Conditions.

## **12. OBSOLESCENCE**

As a result of the continuous evolution of the technologies, the Seller does not guarantee that the Products will continue to meet the Customer's needs for any period of time.

## **13. EXPORT REGULATION**

Xenics and Customer agree to comply with all applicable export laws and regulations. All Xenics InfraRed products are subject to the export regulations following the Wassenaar Regime and/or other international or national export control rules. An export license from the competent local authority might therefore be required when the Customer (re-)exports these Products. An authorization from the Belgian authorities might also be required following the obligation Customer subscribed to when signing the end use certificate. These export licenses and the application of the local export regulation will be Customer's sole responsibility. No Xenics Products can be sold and shipped to individuals and entities subject to sanctions or other measures imposed by the United Nations Security Council or any other competent authority.

As consequence of the foregoing and notwithstanding the acceptance of these Conditions by the Customer, in case any required authorizations are not granted by the concerned administration or other authority, the Seller shall not be capable of delivery and Seller shall not be liable for any consequences and damages to the Customer with this respect. Failure to obtain any such authorization shall be deemed as an event of Force Majeure.

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#### **14. ETHICS**

As a responsible and compliant company with international ethical standards, Xenics is committed to complying with the laws, rules and regulations where it does business, and Xenics undertakes to not sell Products or Services to any company infringing anti-corruption laws or regulations.

As consequence of the foregoing, by ordering Product, the Customer represents and warrants that (i) it has not (and will not) infringed any anti-corruption laws or regulations; (ii) neither it, its representatives nor its executive managers have been, to the best of its knowledge, subject to civil or criminal sanctions, in the United States, Belgium or any other jurisdiction, for infringement of anti-corruption laws or regulations; and (iii) no investigation or proceedings which could lead to such sanctions have been brought against it or against such person.

The Customer warrants that it complies with the legal provisions against corruption in accordance with the OECD Convention of 1997 and the United Nations Convention against Corruption (UNCAC) of 2003.

The Customer further warrants that it has not granted and shall not grant, directly or indirectly, any gift, present, payment, remuneration or benefit whatsoever as incentive for or in consideration for any business relationship with Seller or Products or Services delivered by the Seller. The Customer shall inform the Seller's executive management of any gift, present, payment, remuneration or benefit whatsoever that it may grant, directly or indirectly grant to any employee, executive manager or representative of the Seller or of its affiliates or to any people that may influence their decision with respect to any business relationship with Seller or Products or Services delivered from the Seller. In the event of failure to comply with this clause, the Seller shall automatically have the right to terminate the business relationship with the Customer and any pending Product or Service delivery with immediate effect and without refund to the Customer, without prejudice to any remedies the Seller may claim to the Customer as consequence thereof.

#### **15. TERMINATION**

Xenics is entitled to terminate the Agreement by written notice to Customer without any liability or obligation to refund the Customer in case: (i) of non-payment of Seller's invoice, (ii) the Customer files for bankruptcy or requests a postponement of payment, or (iii) a similar procedure is initiated due to which payment to Xenics is ceased or stayed. The Agreement cannot be cancelled by the Customer, except with Xenics' prior written consent. In such case, where Xenics approves a cancellation, Xenics reserves the right to charge the Customer for reasonable costs based upon expenses already incurred, including, without limitation, any work done, material purchased and also including Xenics' usual overhead for a minimum amount of 30% of the total amount of the invoice.

#### **16. FORCE MAJEURE**

Whenever Xenics, as a result of Force Majeure, is unable to carry out the Agreement, each party has the right to unilaterally terminate the Agreement by written notice, in the event that after a period of 2 months from the notification by Xenics to the Customer regarding the situation of Force Majeure, the situation of Force Majeure remains unsolved, without Xenics being liable to pay damages to the Customer.

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## **17. INVALID CLAUSE**

In the event a provision of these Conditions should be invalid, this will not lead to the invalidity of the remaining provisions of these Conditions. Xenics will replace the invalid provision with a provision that comes as close as possible to the original intended meaning of the provision.

## **18. ASSIGNMENT, THIRD PARTY BENEFICIARIES**

These Conditions and the Agreement shall not be assigned by the Customer without the prior written consent of Xenics. These Conditions do not and are not intended to confer any rights or remedies upon any person or entity other than the Customer. Provisions of these Conditions which by their nature should apply beyond their terms will remain in force after any termination or expiration of the Agreement.

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