

**EISAI INC. TERMS AND CONDITIONS OF SALE TO DIRECT CUSTOMERS**

**ALL PRICES, PRODUCTS, TERMS AND CONDITIONS OF SALE ARE SUBJECT TO CHANGE WITHOUT NOTICE.**

**1. DISTRIBUTOR SERVICES AGREEMENT:**

As agreed to in the Manufacturer's Distribution Services Agreement; Distributor agrees to purchase Seller's entire Product line (unless mutually agreed upon by Manufacturer and Distributor) in accordance with Manufacturer's terms and conditions of sale covered in this document.

**2. TERMS OF SALE:**

All sales of products sold by Eisai Inc. ("Seller") to direct purchasers ("Customer") are expressly subject to the following terms and conditions. Any additional or inconsistent terms and conditions contained in any purchase order or other writing submitted by Customer are hereby not binding on Seller and shall be of no force and effect unless expressly accepted in writing by Seller. Submission of a purchase order will be deemed to constitute Customer's consent to all terms and conditions herein. In transactions involving a formal purchase contract, the following terms and conditions of sale apply unless the parties expressly agree in writing otherwise in such contract.

**3. CREDITWORTHINESS:**

Trade credit may be extended only to those accounts whose credit standing has been approved by Seller. Credit levels will be determined by customers' ability to pay based on financial information, credit history, credit references, and customers' previous purchase patterns. If approved, credit will be extended to a level adequate to meet the Customer's expected purchase patterns under stated terms of sale provided that the customer can demonstrate ability to pay. Customers must furnish information requested by Seller for review to verify its ability to pay sums due, including but not limited to Customer's audited financial statements. Seller 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 Seller's sole judgment Customer's financial condition or creditworthiness has become impaired. Failure to furnish payment within 10 days of demand by Seller shall constitute a repudiation of the contract, and in such event Seller shall be entitled to receive reimbursement for its costs related to cancellation.

**4. ORDERS:****BUY-IN POLICY:**

Seller will allow Customer to purchase their normal (average) monthly product (NDC level) inventory requirements, as calculated over the most recent three month period, plus an additional 25 percent.

*Please note that this buy-in policy does not apply to new product launches, medical emergency orders or products recently released from backorder.*

**4.1 Order Method:**

The preferred method of order receipt is via EDI. Customer may mail, e-mail, fax, or telephone orders for products sold by Seller. All orders are subject to acceptance and credit approval by Seller. Any cumulative account payable balance maintained at any time by Customer shall not exceed Seller's approved credit limit. Seller reserves the right to adjust Customer's credit limit.

All orders and any pertinent correspondence should be sent to:

Customer Service Eisai Inc.  
100 Tice Blvd Woodcliff Lake, NJ 07677  
888-347-2448

**4.2 Order Frequency and Quantity:**

Customer must order each line item (NDC level) in the minimum order quantity of inner shipper or full case multiples as published in the Seller's price list. Customers are limited to two orders per week for each ship-to location, except when otherwise agreed to by the Seller.

**4.3 Buying Limit:**

Seller agrees to fairly enforce the Seller's buying limit policy by monitoring the amount of Seller's products that can be purchased by any one Customer in any given month to ensure that Seller can meet the needs of all of its customers when demand for products is particularly high. Therefore, Seller reserves the right to limit the number of orders, restrict or limit the quantities to be shipped under any order, to ship orders in installments, to allocate backordered inventory, or to refuse any order prior to shipment from Customer in any given calendar month.

**4.4 Cancellation:**

Upon notice to Customer, Seller may cancel any order or any part thereof for any reason (including Customer's purchase or sale of products in a manner inconsistent with local, state or federal laws or regulations). Upon cancellation, Customer agrees to waive all claims for damages, including, but not limited to, any loss of anticipated profits, and to accept as its sole remedy for cancellation the return of any payment made by Customer to Seller prior to such cancellation for products covered under such cancelled order.

**5. SHIPMENT, DELIVERY AND TITLE:**

Seller shall, to the best of its ability, ship product with expiration dating greater than 6 months unless otherwise agreed in advance by Seller and Customer. Seller shall not be liable for delay or non-delivery of any accepted orders.

**5.1 Shipment:**

Shortages, overages, damages and/or other discrepancies must be reported promptly in writing to Customer Service, Eisai Inc within ten (10) days of shipment. In the event of such claims, Customer must hold the products pending the receipt of Seller's instructions concerning disposition and permit Seller's representatives to inspect them upon request. If Customer fails to notify Seller of any such claims within ten (10) days after receipt of order, products will be deemed to have been received in good condition and in the quantities stated in Seller's invoice and to have been accepted by Customer. No deductions may be taken within this period without the express written consent of the Seller. In the event of damages to product shipments, Seller agrees to either provide credit or replacement product upon receipt and verification of claim from Customer.

**5.2 Delivery:**

Seller will select the carrier for delivery of product to Customer. Seller shall prepay and assume transportation charges to the Customer's destination unless shipment by special means is requested. If special handling or routing is requested and is approved in advance by Seller, the Customer shall pay all associated transportation and handling costs. Drop shipments may be subject to surcharge at Seller's discretion.

**5.3 Title:**

Shipments, including drop shipments, are strictly FOB point of origin with title of Seller's products passing upon delivery to common carrier. Seller agrees that it will take the responsibility to file claims against carriers for goods lost in transit, and will adjust the relevant invoices accordingly or provide replacement product.

**6. PRICING AND PAYMENT TERMS:**

**6.1 Pricing:**

Product will be sold to Customer at Seller's published Wholesale Acquisition Cost (WAC) or contract price.

Direct Customer orders with shipment to their customer (drop shipments) will be sold at WAC or contract price.

Seller does not extend price protection at the time of a price increase.

### **6.2 Payment Terms and Setoff Rights:**

Payments are deemed received when physically present in Seller's lock box (cash/check) or upon confirmed EFT. If the net payment due date falls on a weekend or bank holiday, the cash discount will be earned if payment is received on the next business day. If payment is not received within the terms specified, no discount will be earned and the account will be considered past due. Any unauthorized discount taken will be charged back, and subject to repayment within 15 days. The earning of cash discount is a stand-alone transaction and not subject to any offset or counterclaim by Customer. If Customer does not pay in accordance with these payment terms, without limitation to any additional rights and remedies under law or equity, Seller may, at its option, setoff any credits due from Seller to Customer or any debts or obligations to Customer that Seller may have.

If shipments are delayed upon request of the Customer, payment shall become due according to payment terms based on the date Seller is prepared to make shipment.

### **7. LIMITED WARRANTY:**

Seller guarantees to Customer that all Sellers' products meet appropriate standards of identity, strength, quality and purity in their manufacture.

Returns and Chargeback sections to be completed by Eisai

### **8. RETURN GOODS POLICY:**

[http://us.eisai.com/pdf\\_files/Eisai>Returns Policy.pdf](http://us.eisai.com/pdf_files/Eisai>Returns Policy.pdf)

### **9. CHAREBACKS**

[http://us.eisai.com/pdf\\_files/Chargeback Policy for Eisai Products.pdf](http://us.eisai.com/pdf_files/Chargeback Policy for Eisai Products.pdf)