

Narcan® Nasal Spray at Public Interest Price Terms and Conditions

The undersigned (“Customer”) hereby acknowledges and agrees that NARCAN® Nasal Spray (Naloxone HCl) 4mg (the “Product”) made available by Adapt Pharma, Inc. (“Adapt Pharma”) to Customer at the Public Interest Price is conditioned upon Customer making the following certification (“Certification”). Customer hereby represents and warrants to Adapt Pharma and agrees as follows:

1. Customer is a Qualified Purchaser of the Product at the Public Interest Price. A “Qualified Purchaser” means (a) a First Responder, State or Local Government Agency, School, Community-based organization, (b) a government funded organization, (c) an entity that has received a grant for the purchase of the Product, or (d) an entity that is purchasing the Product on behalf of a government entity or community members by acting as a naloxone distribution program or community based organization. Notwithstanding the foregoing, Customer shall be subject to Adapt Pharma’s final approval in its sole discretion.
2. Customer shall purchase, receive and use the Product in accordance with all applicable laws, rules and regulations. Customer has presented to Adapt Pharma a valid pharmacy license or standing order for purchase and use of the Product. The Product may only be used by Customer, or a Qualified Purchaser authorized by Customer, and may not be submitted for reimbursement of any type, including, without limitation, private pay, commercial, government authority, agency or otherwise.
3. The Product is not returnable or refundable. Minimum order quantity is 12 units (1 case).
4. An invoice will be sent to Customer at its billing address. Unless otherwise specified on the invoice, all invoices for Product supplied are payable in full within thirty (30) days from the date of invoice. Customer agrees to review invoices upon receipt and to notify Adapt Pharma in writing of any disputes within twenty (20) days of receipt of invoice. If such written notice is not received by Adapt Pharma, the invoice will be deemed to be final and payable in full.
5. Adapt Pharma shall have the right and is authorized to request information from Customer and third parties to confirm Qualified Purchaser status and/or credit status prior to accepting an order, and Customer shall fully cooperate with any such request.
6. Adapt Pharma reserves the right to audit Customer to ensure the Product is used as set forth in this Certification and as otherwise required by Adapt Pharma.
7. All orders are subject to acceptance by Adapt Pharma. Adapt Pharma may fulfill or refuse or otherwise limit orders at its sole discretion. Adapt Pharma shall use reasonable efforts to supply Customer with Product; provided, however, that Adapt Pharma shall have no liability for failure to supply Product.
8. All of the information provided by the Qualified Purchaser is true, complete and accurate.
9. Adapt Pharma warrants that at the time of delivery, the Product (a) shall be free from any defects in design, material, or workmanship, (b) shall not be adulterated or misbranded within the meaning of the U.S. Food, Drug and Cosmetic Act, and (c) shall conform to laws, rules and regulations of the FDA. In the event that the Product delivered to Customer fails to conform to the warranties in this paragraph, Customer may reject such Product by giving written notice within thirty (30) days after delivery. If Customer fails to reject the Product in accordance with this paragraph within the thirty (30) day period, Customer shall be deemed to have accepted the shipment. ADAPT PHARMA MAKES NO OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED, WITH RESPECT TO THE PRODUCT, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE.
10. Adapt Pharma’s sole obligation under any warranty shall be to replace or refund defective Products. NEITHER CUSTOMER NOR ADAPT PHARMA SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES OR LOSSES, INCLUDING LOST PROFITS, EVEN IF ADVISED OF THE POSSIBILITY THEREOF.
11. Customer has reviewed, and Customer has provided Qualified Recipients authorized by Customer to receive and/or administer the Product, the instructions for use, storage, handling, and other information with respect to the Product in accordance with the FDA approved prescribing information, and Customer and such Qualified Recipients will comply with such instructions and information. Customer shall be responsible for the negligent acts and omissions of its employees, agents, and representatives.
12. The term of this Certification shall commence on the date of this Certification and continue for a period of one (1) year thereafter (“Term”). The expiration or termination of this Certification shall not release Customer from fulfilling any obligations it may have incurred prior to any such termination, nor prejudice any rights or remedies that Adapt Pharma may have at law or in equity.
13. During the Term and for a period of one (1) year thereafter, Customer shall hold the terms of this Certification and information Adapt Pharma discloses to Customer in confidence and not use or disclose it to any third party without the written consent of Adapt Pharma. However, the parties agree that the Customer shall not breach this Agreement if it provides information in response to requests made pursuant to state or federal law, including but not limited to the Kentucky Open Records Act.
14. This Certification and Customer’s credit application delivered to Adapt Pharma, constitute the entire agreement and understanding of the parties with respect to the subject matter hereof. No changes to this Certification will be binding upon Adapt Pharma unless made in writing and signed by Adapt Pharma. In the event of any conflict between this Certification and any other agreement or purchase order of Customer, this Certification shall govern.
15. Failure of Adapt Pharma to enforce a right does not waive it. If a court of competent jurisdiction finds that any provision of this Certification is invalid or unenforceable, the other provisions of this Certification will remain in full force and effect.

16. Adapt Pharma shall not be liable for delay or failure of performance occasioned by causes beyond its control, including, but not limited to, acts of God, civil unrest, acts of terrorism, declared or undeclared wars, fires, floods, unusually severe weather, earthquakes, strike, lock-out, or other industrial or transportation disturbance, governmental law, regulation or ordinance, failure of public utilities, or unavailability, shortage or interruption of ingredients, raw materials, packaging and/or other materials.
17. Customer may not assign any rights, interests or obligation hereunder without the prior written consent of Adapt Pharma. Adapt Pharma and Customer will at all times be independent contractors. This Certification will not be interpreted or construed to create an association, joint venture or partnership between the parties or to impose any partnership obligation or liability upon either party.

ACKNOWLEDGED AND AGREED:

Lexington-Fayette Urban County Government
Customer Full Legal Name

Signature

Linda Gorton
Name of Authorized Representative

Mayor
Title

Local Government Agency
Type of Qualified Entity (please select from list above)

200 East Main Street
Address

Lexington, KY 40507

Date: _____