

# ConvaTec 2022 Authorized Distributor Price File and Terms and Conditions, as Amended

Following are the pricing, terms, conditions of sale and policies as they generally apply to Authorized ConvaTec Distributors. *ConvaTec reserves the right to amend the pricing, terms, conditions of sale and policies contained herein at any time.*

PLACEMENT OF A DISTRIBUTOR'S FIRST ORDER FOR PRODUCTS ON OR AFTER **OCTOBER 1, 2021** CONSTITUTES THE DISTRIBUTOR'S AGREEMENT TO BE BOUND BY THE AMENDED TERMS AND CONDITIONS CONTAINED HEREIN.

## Date

**Effective Date:**

**October 1, 2021**

## General

- a) "Affiliates" means in relation to ConvaTec ("ConvaTec"), any company, partnership or other entity which directly or indirectly controls, or is under common Control by or with ConvaTec including as a subsidiary or holding company.
- (b) "Control" means an entity having Control of a company if (i) the directors of the company or of another company which has Control of it (or any of them) are accustomed to act in accordance with that entity's directions or instructions, or (ii) that entity is entitled to exercise, or control the exercise of, one third or more of the voting power at any general meeting of the company or of another company which has Control of it; and (iii) where two or more entities together satisfy either of the above conditions, they are to be taken as having Control of the company.
- (c) "Customer" means any firm, company, trust or person who purchases Products from ConvaTec.
- (d) "Consumables" means those Products supplied as sterile or single use only items.
- (e) "Orders" means any order placed by the Customer and accepted by ConvaTec subject to these Terms.
- (f) "HazMat Products" means Products that contain substances which are flammable, pressurized, corrosive, damaging to the environment, irritant or harmful and/or are classified as such by applicable regulations.
- (g) "Minimum Order Value" means an Order for Products where the total Order value is \$1,000, exclusive of applicable taxes.
- (h) "Products" refers to all items sold by ConvaTec, including Consumables and Third Party Products.
- (i) "Third Party Products" refers to products not manufactured or assembled by ConvaTec or its Affiliates and supplied to ConvaTec by third parties for re-sale by ConvaTec.
- (j) Unless otherwise agreed in writing or except where they are at variance with (i) the regulations governing the sale of Products to government bodies or any other public entity or (ii) the mandatory provisions of local law, all Orders, offers, quotes and resulting contracts between ConvaTec and Customer shall be governed by these terms and conditions of sale (the "Terms") which shall supersede and exclude any terms and conditions proposed, stipulated or referred to by Customer.
- (k) Unless otherwise agreed with the Customer, all ConvaTec offers are valid for a period of thirty (30) days. No Order will be deemed accepted until ConvaTec issues a written confirmation or, if no confirmation is issued, upon shipment of the Products by ConvaTec.
- (l) All descriptions, specifications and illustrations contained in ConvaTec's catalogues, price lists and advertisements or otherwise communicated to Customer are intended to present a general idea of the Products described therein, and are not integrated herein by reference.
- (m) Changes may be made to the specifications of the Products (i) at ConvaTec's sole discretion, when required to conform with applicable statutory, local or (ii) at the request of the Customer to the extent that the changes will not, in the sole opinion of ConvaTec, materially affect the Products' quality or performance.

## Ordering

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Orders and Customer Service: 1-800-582-6514 (8:00 am to 5:00 pm Eastern Standard Time)  
FAX Orders: 1-866-226-6409 (Toll Free – Available 24 Hours)  
E-mail Orders: [us.customerservice@convatec.com](mailto:us.customerservice@convatec.com)  
Purchase Order Address: ConvaTec  
7815 National Service Road  
Suite 600  
Greensboro, NC 27409

## EDI

ConvaTec supports EDI 850 Purchase Orders, 810 Invoices, 856 Advance Ship Notices, 820 Electronic Invoice Payments, 855 Purchasing Order Acknowledgements, 844 Product Transfer Account Adjustment, 845 Price Authorization Acknowledgement, and 867 Product Transfer and Resale.

## Pricing

### *One Price Into Stock / Annual Volume Discount*

<u>Program Level</u>	<u>Previous Year *Annual Net Purchases</u>	<u>One Price Into Stock</u>
Level 2	\$250,000 - \$749,999	Base Less 2%
Level 4	\$750,000 - \$1.5 Million	Base Less 4%
Level 6	> \$1.5 Million	Base Less 6%

\* For 2022 level changes, Previous Year Annual Net Purchases are measured from October 1, 2020 – September 30, 2021.

## Pricing Terms

2% 10 days, Net 30 days

## Eligibility

- \$250,000 Minimum annual net purchases of ConvaTec product\*
- Provide sales tracking via electronic media. See sales tracking policy for details.

In order to ensure product quality, approved labeling, appropriate handling, and the integrity of storage conditions, ConvaTec reserves the right to discontinue sales to any Authorized Distributor that purchases ConvaTec products that were previously sold outside the U.S. or that were originally exported from the U.S.

Products purchased from ConvaTec U.S. are intended for sale and distribution in the domestic United States only. Distributors may not knowingly sell the product to a customer that violates the terms and conditions of any contracted pricing they may receive. ConvaTec reserves the right to recover lost revenue, all rebates and discounts paid, plus legal and administrative costs related to the preceding statement. Distributors may not sell the product outside the U.S. or to customers who intend to sell

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the product outside the U.S. Doing so may result in being disqualified as an Authorized ConvaTec Distributor at ConvaTec's sole discretion.

Distributors shall not advertise or sell Products, and may not resell Products to any other entity who advertises or sells Products, on or through any website, online marketplace (e.g., Amazon, eBay, Walmart Marketplace), mobile application, or other online forum without the prior written consent of ConvaTec. This prohibition supersedes any prior agreement between ConvaTec and Distributors regarding the sale of the Products on or through websites, mobile applications, and other online forums. Any authorization previously granted to Distributors by ConvaTec to sell Products on or through a website, mobile application, or other online forum is hereby revoked, and can only be reauthorized hereafter in writing by ConvaTec.

Products purchased from sources associated with domestic rebate fraud may result in disqualification as an Authorized ConvaTec Distributor. ConvaTec reserves the right to recover lost revenue, all rebates and discounts paid, plus legal and administrative costs related to the preceding statement.

ConvaTec is committed to helping its Distributors improve their sales of ConvaTec products, in ways tailored to suit their needs, expertise, and commitment to the ConvaTec line.

For product ordering questions, contact ConvaTec Customer Service at 800-582-6514 or [us.customerservice@convatec.com](mailto:us.customerservice@convatec.com).

For product inquiries, product complaints or to contact a sales representative, please contact the ConvaTec Customer Interaction Center at [CIC@ConvaTec.com](mailto:CIC@ConvaTec.com) or call 1-800-422-8811 with any questions.

*\*Annual purchases of Wound Care, Skin Care, Continence and Critical Care, and Ostomy products net of returns, discounts and chargebacks/credits or any other adjustments. Discounts and chargeback/credits include but are not limited to promotional discounts and contracted rebates. Returns means products returned to, and accepted by, ConvaTec or its authorized facilities in accordance with the applicable return goods policy.*

## Additional Terms and Conditions of Sale

**All sales are subject to the following Terms and Conditions:**

### **Terms of Payment**

2% 10 days, Net 30 days

### **Minimum Order**

Orders of less than \$1,000 net will be subject to additional shipping and handling charges.

### **Drop Shipments**

All drop ship orders will be subject to an \$80 shipping and handling charge.

### **Pricing, Payment, and Cancellation**

(a) Unless otherwise specified, all prices are quoted in USD and are exclusive of applicable taxes or duties and are further exclusive of packing, transportation and insurance costs. For the avoidance of doubt, ConvaTec reserves the right to charge Customer any additional costs that may be incurred by ConvaTec as a result of special shipment or packaging requests made by Customer. ConvaTec may in its absolute discretion impose a delivery charge of \$50 for orders under \$1,000 on any Orders that do not exceed ConvaTec's Minimum Order Value. All Expedited orders will have a \$10 charge in addition to the cost of Freight.

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- (b) Prices shall be as listed in ConvaTec's price list current at the date of acceptance of the Order and in any case as shown on the invoice. ConvaTec reserves the right, at any time prior to delivery and with not less than thirty (30) days' prior written notice, to increase the prices to reflect costs of business, inflation or increases in cost to ConvaTec due to causes beyond ConvaTec's control (such as, by way of example, foreign exchange fluctuations, currency regulations, changes to delivery dates, quantities or specifications requested by Customer, or any other delay due to any act or omission of the Customer).
- (c) Unless otherwise specified by ConvaTec in the relevant invoice, all sums invoiced will be due within thirty (30) days from the invoice date (the "Due Date"). Non-payment of an invoice when due may, at the sole option of ConvaTec, result in acceleration of all outstanding invoices and ConvaTec shall further have the right to suspend or cancel outstanding orders without the need for formal notice. ConvaTec may also elect to bring action for the collection of unpaid amounts in any court having competent jurisdiction.
- (d) Payment shall be treated as having been made only when any check or ACH has been honored according to its terms.
- (e) On any Order accepted by ConvaTec, but not yet shipped, ConvaTec shall use its reasonable efforts to accommodate Customer's request for cancellations or alterations; provided that ConvaTec may impose reasonable material, labour, storage or cancellation charges. NO CANCELLATIONS OF, OR REQUESTS FOR ALTERATIONS TO, STANDARD PRODUCT ORDERS ARRIVING 8 WEEKS OR LESS PRIOR TO THE DELIVERY DATE WILL BE ACCEPTED AND ORDERS OF NON-STANDARD PRODUCTS CANNOT BE CANCELLED OR ALTERED. IN BOTH THESE CASES, ConvaTec SHALL INVOICE CUSTOMER FOR THE FULL AMOUNT DUE.

## **Delivery; Passing of Risk and Title**

- (a) Unless otherwise stipulated in writing, all Products are sold FOB Pre-paid as set out in the Order and Order confirmation.
- (b) ConvaTec will use commercially reasonable efforts to adhere to agreed delivery dates; however, any delivery dates given are estimates only and the time of delivery shall not be of the essence.
- (c) Partial deliveries will be allowed.
- (d) Title and risk in the Products shall be transferred to Customer at the time of delivery and Customer shall insure them against loss or damage accordingly and in the event of such loss or damage shall hold the proceeds of such insurance on behalf of ConvaTec.
- (e) In the event the Products are not received by Customer by the delivery date, Customer shall notify both ConvaTec and the carrier within not less than seven (7) days from the date of invoice.

## **Transportation**

Transportation charges will be prepaid on carriers of ConvaTec's selection. When special handling is requested, i.e., Special Delivery, AirMail, Air Express, Air Freight or Air Parcel Post, ConvaTec will add the shipping charges plus a handling fee for the special service to the invoice. Shipping terms are FOB – Destination.

## **Orders**

All orders are subject to ConvaTec's Terms and Conditions of Sale and to acceptance by ConvaTec's Distribution Center. All orders accepted by ConvaTec shall be subject to delays, failure to deliver or cancellation occasioned by strikes, fires, damages or destruction of plants or laboratories, war, acts of terrorism, riots, embargoes or other contingencies beyond the control of ConvaTec. ConvaTec reserves the right to discontinue and withdraw from the marketplace any product, product size, or packaging at any time without any further obligation on the part of ConvaTec.

## **Inspection; Warranty; Returns**

- (a) Inspection and Acceptance; Returns
  - (1) Customer shall inspect the Products immediately upon receipt and shall within ten (10) business days from delivery give written notice to ConvaTec of any defects or claims that the Products are not as stated on the bill of lading. Customer must provide Invoice, Delivery note or lot # for each product they require to be returned. Customer must also sign a delivery refusal, including the reasons for refusal (either "damaged" or "short"), and

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provide the same to the carrier. Authorized Distributor must contact ConvaTec Customer Service at 1-800-582-6514 or [us.customerservice@convatec.com](mailto:us.customerservice@convatec.com) to request an RGA # prior to returning product. All RGA's will require proof of purchase from ConvaTec, to include original Purchase Order document or invoice. Product lot number / batches returned to the ConvaTec warehouse must match the purchase documentation in order for credit to be eligible. Credit will not be issued for product returned without an RGA #. RGA #'s are valid for ninety (90) days from the date of issuance.

- (2) Failure of Customer to give notice or provide the required information shall be an unqualified acceptance of such Products and a waiver by Customer of all claims with respect thereto and shall further serve as confirmation that Customer represents it has examined the Products and that they are acceptable and clinically suitable for their intended purpose.
- (3) Contested Products must be kept by Customer in the state, condition and location to which they were delivered at ConvaTec's (and the carrier's) disposal and can only be returned to ConvaTec upon ConvaTec's express written consent within thirty (30) days from the date consent is received. Prescriptive, special, modified, discontinued, un-sterile, opened, damaged or defaced disposable or consumable Products or Products held by Customer in inventory for ten (10) business days or more may not be returned ("Unreturnable Products"). Products accepted for return may be subject to a handling charge, which charge shall be paid upon demand. All costs of returning the Products to ConvaTec shall be borne by the Customer unless otherwise agreed with ConvaTec prior to their return. Products are returned at the risk of the Customer and any repairs undertaken by ConvaTec in respect of damage caused in transit will, during their return, be charged to the Customer. All returned Products must be accompanied by the original packing note together with the reason for return of the Products.
- (4) ConvaTec's sole obligation in the event the claim is found to be justified shall be to, at ConvaTec's sole option, replace the Products or issue a credit notice for the purchase price against return of the Products. In the event upon receipt of any returned item ConvaTec finds the claim unjustified or consists of Unreturnable Products, the item will be returned to Customer at Customer's expense and Customer will reimburse ConvaTec for the transportation charges, labour and associated charges incurred in testing the allegedly defective item or returning Unreturnable Products.
- (5) All returns of HazMat Products must be packaged and transported in accordance with applicable regulations and/or in accordance with instructions provided by ConvaTec, dependent on the mode of transport to be used. ConvaTec reserves the right to charge Customer for any costs incurred by ConvaTec in the event that such HazMat Products are not packaged in accordance with regulatory requirements.
- (6) ConvaTec will credit the recipient for the invoice price of any shipments that are lost in transit from ConvaTec to the recipient, provided that; the recipient notifies ConvaTec of the loss, in writing, within 60 days after receipt of the invoice or statement covering the shipment; and ConvaTec is unable to provide the recipient with a satisfactory proof of delivery. If the two conditions are not met, the recipient will bear full responsibility of the loss of shipment.
- (7) Only products purchased by the Authorized Distributor directly from ConvaTec can be returned to ConvaTec for credit. Return of product not purchased directly from ConvaTec must be made to the original Distributor or Wholesaler pursuant to the terms of the original Distributor or Wholesaler return goods policy.
- (8) Once the RGA is approved, ConvaTec required receipt of the goods to the Louisville warehouse within 90 days. Returns with a total value of less than \$50.00 shall be destroyed by the customer and in place of the physical return, the customer should complete and sign a Certificate of Destruction to be eligible for credit.
- (9) ConvaTec will value returned goods at the purchase documentation/invoice price and net of any and all discounts.
- (10) ConvaTec will assess a restocking fee of 20% on ALL products, except those that are determined to be defective upon receipt, or those goods shipped as a result of a ConvaTec error.
- (11) ConvaTec will consider issuing credit only for full market units of product, which are in the original closed, or sealed packaging and which are not marked or damaged in any manner.

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- (12) ConvaTec will consider issuing credit only for product meeting the above conditions and that has been authorized for return within 12 MONTHS from date of invoice. Deduction for anticipated credit value is prohibited.

All Returned goods should be returned to:

**ConvaTec Returns,  
DD124M, 1920 OUTERLOOP  
LOUISVILLE, KY 40219**

ConvaTec reserves the right to destroy returned product if ConvaTec deems unfit for resale, whether or not ConvaTec accepts it for credit.

## (b) Warranty

- (1) With respect to disposable or consumable Products, the warranty supplied is that specified on the packaging. ConvaTec warrants to the original Customer that, at time of delivery, each standard Product manufactured by ConvaTec shall be free of defects in material and workmanship and, when used for the purposes and indications described on the labelling, is fit for the purposes and indications described on the labelling. All warranties for Products shall expire as of the Products' expiration date or, in the event of disposable or consumable Products as specified on the packaging, or if none or for other Products, after one (1) year from the date of shipment from ConvaTec. ConvaTec's warranty hereunder shall not apply if: (i) Products are not used in accordance with instructions or are used for a purpose not indicated on the labelling, (ii) any repairs, alterations or other work has been performed by Customer or others on such item, other than work performed with ConvaTec's authorization and according to its approved procedures; (iii) the alleged defect is a result of abuse, misuse, improper maintenance, accident or the negligence of any party other than ConvaTec; or (iv) defects in Products arising from the use of and drawing, design or specification supplied by Customer. The warranty set forth herein is conditioned upon proper storage, installation, use and maintenance in accordance with applicable written recommendations of ConvaTec. The warranty furnished hereunder does not extend to damage to Products purchased hereunder resulting in whole or in part from the use of components, accessories, parts or supplies not furnished by ConvaTec.
- (2) With respect to Third Party Products, the sole warranty available to the Customer shall be the one given to ConvaTec by the manufacturer to the extent said warranty can be transferred.
- (3) ConvaTec's sole obligation shall be to repair or replace, at ConvaTec's option, any defective component or item and pay transportation expenses for such replacement. Customer shall provide the labour for the removal of the defective component or item and installation of its replacement at no charge to ConvaTec. Customer shall bear all risk of loss or damage to returned Products while in transit. In the event no defect or breach of warranty is discovered by ConvaTec upon receipt of any returned item, the item will be returned to Customer at Customer's expense and Customer will reimburse ConvaTec for the transportation charges, labour and associated charges incurred in testing the allegedly defective item.
- (4) Except as expressly provided herein and to the extent the Customer is not a person dealing as a consumer (as such term is defined under applicable local law), ConvaTec makes no representation or warranty of any kind, expressed or implied with respect to any products, parts or services provided by ConvaTec including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose. Products distributed, but not manufactured, by ConvaTec or its Affiliates are not warranted by ConvaTec and Customer must instead rely on the representations and warranties, if any, provided directly to Customer by the manufacturer of such Products. The sole and exclusive remedy for breach of any warranty is limited to the remedies provided in the paragraph above. The rights of Customers purchasing Products under a consumer transaction (as defined under applicable local law) are not affected by the terms of this Section.
- (5) Warranties for non-disposable Products are set out in the relevant Products data sheet or accompanying user manual or technical guide (collectively, the "Instructions of Use").



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- (6) All ex-planted, contaminated or soiled Products must be returned with the appropriate decontamination certification and in accordance with regulatory requirements. ConvaTec reserves the right to charge Customer for any costs incurred by ConvaTec in the event that such Products are not decontaminated in accordance with regulatory requirements.
- (7) ConvaTec specifically excludes from its warranties products that were resold by an end-user or which cannot be verified to have been originally purchased directly from ConvaTec by Authorized Distributors and resold through the recognized distribution channel.

## **Storage, Handling and Use of Products**

- (a) Customer shall be responsible for any mishandling, from the time that Products are delivered to the Customer, which results in damage to or arising from Products.
- (b) The premises used to store and handle Products shall:
  - (1) be suitably designed and contain sufficient space in order to facilitate storage, cleaning, maintenance and other necessary operations;
  - (2) provide sufficient protection against events that may affect the quality of Products: e.g. lighting, temperature, humidity, airborne particulate and microbial contamination;
  - (3) provide for an adequate separation of Products, in particular, separate and suitable areas must be available for defective Products, recalled Products and waste disposal;
- (c) Operations which may produce impurities or any other matter which may contaminate Products shall not be performed in the area where Products are stored.
- (d) Customer shall put in place the following systems:
  - (1) a documented preventative pest control system which shall include regular inspections and routine bait laying and/or insecticide spraying and be designed to prevent contamination of materials and Products.
  - (2) an end user complaint tracking system to facilitate communication of complaints to ConvaTec within twenty-four (24) hours of receiving such complaints; and
  - (3) a recall system able to trace Products by reference, by lot/batch number and by quantity. Customer should implement appropriate systems which shall be able to track any complaints made by Customer's customers. Said system shall enable Customer to report such complaints to ConvaTec.
- (e) Customer shall ensure that an effective stock rotation system is implemented. A first in/first out system is recommended, in particular for sterile Products or other Products to which an expiry date is allocated.
- (f) Customer shall store, handle and use the Products in accordance with ConvaTec's Instructions of Use.
- (g) Customer shall be responsible for the disposal of all packaging materials.
- (h) ConvaTec will credit buyers for the invoice price of any goods that are damaged in transit from ConvaTec to the recipient, provided that:
  - (1) All visible damage, with pictures, and apparent shortages are noted on the carrier's documents and must be submitted in writing to [us.customerservice@convatec.com](mailto:us.customerservice@convatec.com); and
  - (2) The recipient contacts ConvaTec within 10 calendar days after receipt of the shipment and cooperates with ConvaTec in connection with ConvaTec's claim against the carrier.

\* If the above conditions are not met, the recipient will bear full responsibility for the damaged goods.

## **Recalls**

- (a) If either ConvaTec or the Customer in good faith believes that a recall regarding the Product(s) is warranted, such party shall immediately notify the other party and shall advise the other party of the reasons underlying its determination that a recall is warranted.
- (b) ConvaTec is responsible for recalls regarding the Product(s), including, without limitation, a recall, market withdrawal, safety alert, field action or similar corrective action. If any of such recalls are initiated by ConvaTec or required by law, ConvaTec will be responsible for coordination with the involved parties, including the Customer and authorities. The Customer is not entitled to initiate any such recalls without prior consent from ConvaTec and shall keep returned Products until written instructions are received from ConvaTec. ConvaTec may choose to have the Customer handle

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such recalls on its behalf according to written instructions provided by ConvaTec. Other than where any recalls are due to the acts or omissions of the Customer, ConvaTec will reimburse the Customer for its direct, documented and reasonable costs related to any recalls, provided that for any recalls undertaken by the Customer such Customer-initiated recalls have been approved by ConvaTec in writing and carried out by the Customer in accordance with ConvaTec's instructions. Where recalls are due to acts or omissions of the Customer, then the Customer will reimburse ConvaTec for its direct, documented and reasonable costs related to any recalls.

## **Compliance**

- (a) ConvaTec Trademarks. Distributor acknowledges ConvaTec's exclusive right, title and interest, in and to the trademarks associated with the Products and any other symbols, logos, service marks, trademarks, trade names, copyrights, copyrightable material, or other legally protected information associated with the Products (collectively referred to as the "ConvaTec Trademarks"). Distributor agrees that it will not at any time claim any right, title or interest, in or to the ConvaTec Trademarks, other than the rights to distribute and resell the Products under all terms described herein. Distributor further agrees that it will not at any time do or cause to be done any activity which may in any way, directly or indirectly, impair ConvaTec's right, title or interest in the ConvaTec Trademarks. Upon termination or expiration of this Agreement, Distributor shall not exercise or attempt to exercise any rights or privileges under this Section and shall immediately discontinue the use of the ConvaTec Trademarks in any form whatsoever or any colorable imitation thereof, unless otherwise permitted by ConvaTec.
- (b) When any public authority imposes requirements on the Products, the Customer shall immediately inform ConvaTec of such requirements. Application to any authorities for approval of production permits, registration numbers for the Products and any other matters shall be the Customer's responsibility. Any additional costs in connection with the production and delivery of the Products as well as any other matters concerning the fulfilment of public or regulatory requirements or provisions shall be payable by the Customer. ConvaTec shall not be responsible for obtaining public or regulatory approval.
- (c) Laws, Regulations, and Industry Codes Distributor warrants and represents that they are aware of and shall comply with all applicable laws and regulations (e.g., the False Claims Act (31 U.S.C. § § 3729-3733) and the Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b))) and industry codes (e.g., the AdvaMed Code of Ethics on Interactions with U.S. Healthcare Professionals) that outline acceptable interactions with healthcare professionals, government officials and other third parties, as well as prohibit the offer, promise or payment of any remuneration, directly or indirectly to for the purpose of illicitly (i) obtaining or retaining business; (ii) gaining an unfair business advantage; and (iii) purchasing, using or referring ConvaTec products or services.

## **Limitation of Liability; Indemnification**

- (a) Limitation of Liability
  - (1) The liability of ConvaTec in respect of any claim for loss, damage or expense of any nature with respect to Products delivered or the non-delivery of Products shall in no circumstances exceed a total aggregate sum equal to the purchase price of the Products in question or \$82,964.63, whichever is the lesser.
  - (2) ConvaTec shall have no liability for any indirect or consequential loss including without limitation loss of profits, loss of business, loss of opportunity, loss of goodwill and cost of product recall. It shall further have no liability for any loss, damage or expenses arising from the claims of any third party (including, without limitation, product liability claims) that may be incurred by the Customer.
  - (3) Notwithstanding the foregoing, the above shall not apply in the event of death or personal injury occurring as a result of ConvaTec's negligence or that of its employees or agents.
- (b) Indemnification  
Customer shall guarantee, hold harmless and indemnify ConvaTec and its officers, employees, agents or subcontractors against all claims (actual or threatened) by any third party for loss, damage or expense of whatsoever nature including all legal expenses and related costs and howsoever arising relating to the performance, purported performance or non-performance, of any Customer obligations hereunder.



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## **Intellectual Property Rights**

- (a) Supply of Products shall not confer any rights upon Customer to use any of ConvaTec's patents, registered designs, trademarks, copyright or other intellectual property rights which shall remain the property of ConvaTec.
- (b) Any specifications, plans, drawings, process information, patterns, designs, formulae or other processes created, calculated, drawn up or designed by ConvaTec to fulfil the requirements or comply with the instructions of Customer in connection with the supply of Products and, any information derived therefrom or otherwise communicated to Customer in connection with the supply of Products shall remain the property of ConvaTec at all times, and shall be kept confidential.
- (c) Customer shall not remove or alter any indication, notice or other label affixed to Products referring to the instructions and/or recommendations of the manufacturer or ConvaTec for use.

## **Governing Law – Jurisdiction**

This Agreement and the performance of the parties hereunder shall be controlled and governed by the laws of the State of New Jersey, without regard to its conflicts of law provisions.

## **Replacement of Damaged Goods**

If the recipient requires an immediate replacement of damaged goods, upon discovery, the recipient must call Customer Service at 1-800-582-6514 or [us.customerservice@convatec.com](mailto:us.customerservice@convatec.com) and request a replacement. If immediate replacement is needed, Customer Service will send the product(s) overnight at no charge.

## **AdvaMed Code of Ethics**

ConvaTec requires Authorized Distributors to follow all AdvaMed guidelines on interactions with healthcare professionals and organizations when acting on behalf of ConvaTec. Information about the AdvaMed Code of Ethics can be found at: <https://www.advamed.org/resource-center/advamed-code-ethics-2020>.

## **Chargeback Tracking Submission**

ConvaTec offers Authorized Distributors a chargeback program when they service customers that have contractual purchasing agreements with ConvaTec.

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- The chargeback amount is the difference between the Distributor's acquisition price per product code and ConvaTec's contract selling price with the customer. It is calculated when an Authorized Distributor's acquisition price is greater than the ConvaTec contract selling price.
- Only Authorized ConvaTec direct purchasing Distributors are eligible for chargebacks.
- Only products purchased directly from ConvaTec U.S. are eligible for chargebacks. Submission of chargeback requests for products not purchased from ConvaTec U.S. may be fraudulent and, in the event this occurs, ConvaTec reserves all of its rights and remedies, including its right to take appropriate legal action. In the event ConvaTec obtains information indicating that a Distributor may have submitted chargebacks for products not purchased from ConvaTec U.S., Distributor agrees that ConvaTec shall have the right to audit Distributor's books and records to establish whether this has occurred, and the precise amount involved. ConvaTec reserves the right to recover lost revenue, all rebates and discounts paid, plus legal and administrative costs, including but not limited to GPO Administration Fees associated with all contract sales.

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- In the event of submission of fraudulent chargeback requests for products purchased from ConvaTec U.S., ConvaTec reserves all of its rights and remedies, including its right to take appropriate legal action. In the event ConvaTec obtains information indicating that a Distributor may have submitted falsified chargebacks and tracings to ConvaTec U.S., Distributor agrees that ConvaTec shall have the right to audit Distributor's books and records to establish whether this has occurred, and the precise amount involved. ConvaTec reserves the right to recover lost revenue, all rebates and discounts paid, plus legal and administrative costs, including but not limited to GPO Administration Fees associated with all contract sales.
- In the event Distributor does not purchase 100% directly from ConvaTec U.S., ConvaTec reserves the right to terminate this agreement with the distributor and deny Distributor participate in the chargeback program with ConvaTec U.S.

## **Chargeback Submission and Payment Guidelines**

- Chargeback payments are made in the form of credits to the Authorized Distributor's account. Individual credit memos are not sent to Distributors.
- Distributors are required to submit chargeback information by debit memo for reconciliation purposes.
- Distributors shall base chargeback eligibility calculations solely on data provided by ConvaTec through daily bid notifications.
- Chargebacks are honored for purchases made by eligible customers during the effective dates of their purchasing agreements with ConvaTec.
- Submission detail must include the ConvaTec contract number, the debit memo number, customer detail, invoice detail, product detail, along with the acquisition cost, expected contract amount, and the expected chargeback amount. (More information about ConvaTec's sales tracking policy is outlined below.)
- Chargebacks older than 6 months from the date of the Distributor invoice are considered closed and ineligible for recalculation and payment/credit.
- Distributors must report tracking on all sales to be eligible for chargebacks.
- Deductions by Distributor for anticipated Credit value is prohibited.

## **Sales Tracking and Chargeback Submission Policy**

In the spirit of mutually serving end-user customers, it is critical for ConvaTec to know where Authorized Distributors are shipping ConvaTec product. Additionally, in order to improve the efficiency of the health care supply chain, ConvaTec requires sales tracking and chargeback data to be submitted in an electronic format.

### **Electronic Media Options**

Sales tracking submissions must be provided to ConvaTec in an electronic format. Hard copy or paper reports will not be accepted or processed. Options include EDI 844 / 867 or Excel spreadsheet (via e-mail attachment).

### **Contacts**

#### **For 844:**

Contact ConvaTec Financial Services at:

[cvtcbs@convatec.com](mailto:cvtcbs@convatec.com)

#### **For 867 or Excel files via e-mail:**

ConvaTec is committed to facilitating the implementation of electronic sales and chargeback reporting. Please contact:

[convatec.sales@convatec.com](mailto:convatec.sales@convatec.com)

# ConvaTec 2022 Authorized Distributor Price File and Terms and Conditions, as Amended

## Sales Tracking Submission

### Reporting Requirements

- Maintain format of data month to month. When a Distributor changes the format of the data, ConvaTec incurs significant reprogramming requirements. Therefore, once electronic reporting has commenced, please contact ConvaTec's Sales Reporting and Analysis Department at [convatec.sales@convatec.com](mailto:convatec.sales@convatec.com) before changing the data format. All changes must be approved by ConvaTec prior to submission.
- Authorized Distributors must report end-user ship-to address. Billing address may also be required based on contract type (e.g. retail-based contracts) in accordance with the sales tracings agreement. However, Billing address may not be substituted for shipping address.
- Authorized Distributors shall not include personally identifiable information of any product end users in any Sales Tracking Report and shall comply with all applicable federal and state privacy laws in preparing such reports.
- For sales to Patients only, ship to address may be substituted with ship to zip code. All other transactions should be reported at the customer level.

### Reporting Frequency and Payment for Sales Tracking Reports

- To ensure accurate chargeback reconciliation, monthly data must be submitted no later than 10 days after the end of the month.
- Authorized Distributors will provide monthly sales tracking reports that track all product sales at the "ship-to" and "bill-to" addresses.
- ConvaTec will pay Authorized Distributors on an annual basis for sales tracking reports delivered with the information and in the form required by ConvaTec. Based on the delivery of twelve (12) months of sales reporting annually, total annual payments for sales tracking reports will be as follows:

<u>Pricing Band</u>	<u>Sales Tracking Report Payment</u>
Base*	\$625
Level 2 (Base 2)	\$ 1,250
Level 4 (Base 4)	\$ 3,000
Level 6 (Base 6)	\$ 10,000

\* Base will be made effective January 1, 2022

- If sales tracking reports are not received on a regular basis, then ConvaTec reserves the right to withhold sales reporting payments. Distributor Tier Level eligibility may be affected as well.

Note: Payment will be made via check and mailed by March 31, 2023.

***ConvaTec reserves the right to amend the pricing, terms, conditions of sale and policies contained herein at any time.***

## Credit and Collections

# ConvaTec 2022 Authorized Distributor Price File and Terms and Conditions, as Amended

ACH Payments: Please contact ConvaTec Customer Financial Services at [Accounts.Receivable@convatec.com](mailto:Accounts.Receivable@convatec.com).

Remit Payment To: ConvaTec Inc.  
P.O. Box 978794  
Dallas, TX 75397-8794

Overnight Payments: JP Morgan Chase TX1-0029  
ConvaTec Inc. Lockbox 978794  
14800 Frye Road, 2<sup>nd</sup> Floor  
Ft. Worth, TX 76155

Customer Financial Services Department: ConvaTec Customer Financial Services  
7815 National Service Road  
Suite 600  
Greensboro, NC 27409

A professional Customer Financial Service Representative is available at [Accounts.Receivable@convatec.com](mailto:Accounts.Receivable@convatec.com) or 1-866-872-5112, between 8:00 am – 5:00 pm Eastern Standard Time), Monday – Friday, to assist with information regarding outstanding account balances, invoices and payment information.

## Customer Interaction Center (CIC)

ConvaTec has an experienced Customer Interaction Center Team that includes WOC/ET nurses who are available to answer product related questions for Authorized Distributors, healthcare professionals or patients. ConvaTec's trained staff can also advise Distributors of the other product-related services and literature offered by ConvaTec.

Distributors can reach the Customer Interaction Center at **1-800-422-8811**, Monday through Friday, 8:30am – 7:00pm ET, or via email at [cic@convatec.com](mailto:cic@convatec.com). ConvaTec's Automated Phone System can be accessed 24 hours, 7 days a week.

## DISCLAIMER

Any reimbursement information provided by ConvaTec is intended to provide general information relevant to coding and reimbursement of ConvaTec's products only. Coverage and payment policies for the same insurer, such as Medicare, can vary from one region to another and may change from time to time because of ongoing changes in government and insurance industry rules and regulations. Therefore, please confirm HCPCS Codes with a local DMERC before processing claims. ConvaTec does not guarantee coverage or payment of products listed in this Price File.

***ConvaTec reserves the right to amend the pricing, terms, conditions of sale and policies contained herein at any time.***