

라이선스, 특허실시, 기술이전, License 계약에서 Running Royalty 산정기준 Net Sales

정의 영문계약 조항 샘플 – 상세하게 기재한 방식 사례



**"Net Sales"** means, with respect to a given period of time, gross sales of the Product in such period to unrelated Third Parties in bona fide arm's length transactions, (excluding sales or dispositions for use in Clinical Studies or other scientific testing or reasonable quantities of samples, in each case for which Licensee and any such Third Party Distributors receive no revenue), less the following deductions which are actually incurred, allowed, paid, accrued or specifically allocated to such gross sales amounts of the Product and not separately invoiced:

(a) credits or allowances actually granted for damaged Product, returns or rejections of Product, price adjustments, and billing errors;

(b) governmental and other rebates (or equivalents thereof) granted to: managed health care organizations; pharmacy benefit managers (or equivalents thereof); federal, state/provincial, local and other governments, their agencies and purchasers and payors, including, without limitation, any state or federal Medicare, Medicaid or similar program); or trade customers;

(c) normal and customary trade, cash and quantity discounts, allowances and credits actually allowed and taken specifically with respect to sales of other dispositions of the Product;

(d) distribution services agreement fees allowed or paid to Third Party distributors;

(e) transportation costs, including without limitation insurance, for outbound freight related to delivery of the Product to the extent included in the gross amount invoiced;

(f) excise and sales taxes, tariffs, duties, value added taxes, and other taxes applied to the sale of the Product imposed upon and paid directly with respect to such sales or (reduced by any refunds of such taxes deducted in the calculation of Net Sales for prior periods and, for the avoidance of doubt, no deduction shall be permitted for income, withholding, corporate or similar taxes); and

(g) any other items that reduce gross sales amounts as required by GAAP.

Transfers and sales of the Product between or among a Party and its Affiliates or Third Party Distributors shall be excluded from the computation of Net Sales, but the subsequent final sales of the Product to Third Parties by such Affiliates or Third Parties shall be included in the computation of Net Sales.

There shall be no double counting in determining the foregoing deductions from gross amounts invoiced to calculate Net Sales. The deductions set forth above in this definition of Net Sales shall be determined in accordance with GAAP, as consistently applied by Licensee and such Third Party Distributors across all of their products. The amounts set

forth in clauses (a) through (g) above shall only be deducted from gross invoiced sales where gross invoiced sales before deductions are non-discounted gross sales amounts.

In the event Licensee or such Third Party Distributors sell the Product together with other products to Third Parties in a particular country in the Territory and the price attributable to the Product is less than the average price of "arm's length" sales of the Product alone in the particular country for the reporting period in which such sales occur (such sales to be excluded from the calculation of the average price of "arm's length" sales of the Product alone), Net Sales for any such sales shall be the average price of "arm's length" sales by Licensee or Third Party Distributors, as applicable, of the Product alone and in the country during the reporting period in which such sales occur. If the average price of "arm's length" sale of the Product cannot be determined in any given country, the Net Sales will be determined by the value of the Product sold to similar customers in countries with similar pricing and reimbursement structures and for similar quantities. Any dispute as to the determination of fair market value that cannot be resolved through discussion between the Parties shall be determined in accordance with Section 3.2(i). Notwithstanding the foregoing, in the event the Product is sold as a Combination Product, for purposes of determining the royalties payable by Licensee to Licensor hereunder, Net Sales shall be

calculated by the Net Sales for such Combination Product in a manner to be negotiated and agreed upon by Licensor and Licensee, reasonably and in good faith, prior to any sale of such Combination Product, which shall be based upon the respective fair market values of the active pharmaceutical ingredients in such Combination Product; provided that in no event shall the royalty rate payable by Licensee to Licensor for such Combination Product be greater than the royalty rate of the Product containing the Compound as the sole active ingredient.

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