

CANADA NEW ACCOUNT APPLICATION



Name of Licensed Health Care Professional: _____ Professional Title: _____

State of Issued License/Certificate: _____ License/Certificate Number: _____ Expiration Date: _____

Are you applying as an individual or a business? Individual Business

PRACTICE/BUSINESS LOCATION

Practice/Business Name: _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

NOTE Please send a copy of your Current Business License and/or Resale Certificate to new.accounts@xymogen.com

BILLING ADDRESS (if different from above)

Street Address: _____

City: _____ State: _____ Zip Code: _____

CONTACT INFORMATION

Name of Primary Contact: _____

Primary Telephone Number: _____ Fax Number: _____

Email Address: _____

Website: _____

Will you be promoting XYMOGEN products through this website? Yes No

ADDITIONAL INFORMATION

Would you like your patients to see only your recommended products? Yes No

Whom do we thank for referring you? _____

Please name the three most common conditions you treat: _____

Which brands do you currently carry in your practice? _____

Any additional comments/requests? _____

PLEASE NOTE

All of the documents below are required before we can open your account. Please ensure that all required documents are signed, dated, and filled out in their entirety to avoid any unnecessary delays in our review process. If any of these documents are missing or incomplete, your wholesale account cannot be established. Please contact the New Accounts department if you have any questions.

- | | | |
|--|---|--|
| <input type="checkbox"/> New Account Application | <input type="checkbox"/> No Internet Sales Policy | <input type="checkbox"/> Return Policy |
| <input type="checkbox"/> Customer Protection Agreement | <input type="checkbox"/> Copy of current business license and/or resale certificate | |

Fax completed forms to 321-251-4674. Your account confirmation will be sent via email within 2 to 3 business days, and your XYMOGEN Welcome Packet will arrive by standard mail. Please contact the New Accounts Department at 800-647-6100 or by email at new.accounts@xymogen.com if you have any questions.

XYMOGEN'S CUSTOMER PROTECTION AGREEMENT

This Agreement is between the signed health care professional ("CUSTOMER") and XYMOGEN. CUSTOMER shall not disclose XYMOGEN pricing on the Internet or supply XYMOGEN products to any re-sellers or retailers.

THIS XYMOGEN CUSTOMER PROTECTION AGREEMENT ("Agreement") is made as of this ___ day of _____, 20__ (the "Effective Date"), by and between XYMOGEN, Inc. ("XYMOGEN"), an Illinois corporation, with its principal place of business located at 6900 Kingspointe Parkway, Orlando, FL 32819; and the health care professional, _____ ("CUSTOMER"), with its principal place of business located at _____.

In consideration of the mutual promises and covenants herein, XYMOGEN and CUSTOMER ("Parties") do hereby agree as follows:

- XYMOGEN is a producer and wholesale supplier of nutraceutical and natural health products, which are marketed worldwide under the XYMOGEN product line and brand name ("Products"), and the Products require exclusive distribution through a licensed health care professional.
- CUSTOMER wishes to purchase from XYMOGEN and XYMOGEN wishes to supply to CUSTOMER, the Products for the benefit of CUSTOMER's health care practice, patients or clients.
- It is in the mutual interests of XYMOGEN and CUSTOMER to restrict Internet sales of XYMOGEN Products, and CUSTOMER acknowledges, understands, agrees to XYMOGEN's 'No Internet Sales Policy' and has also informed all staff members and purchasers of this policy.
- With regard to Private Label products, it is in the mutual interests of XYMOGEN and CUSTOMER have complete disassociation between the Private Label Products and XYMOGEN Products, and CUSTOMER acknowledges, understands, agrees to XYMOGEN's 'Private Label Sales Policy' and has also informed all staff members and purchasers of this policy.

XYMOGEN and CUSTOMER ("Parties") agree as follows:

1. PURCHASE AND SUPPLY

XYMOGEN will sell to CUSTOMER, and CUSTOMER shall, from time to time, purchase the Products from XYMOGEN. CUSTOMER will only sell or provide XYMOGEN products to end users, and CUSTOMER will not supply XYMOGEN products to any re-sellers or retailers, including but not limited to, amazon.com and ebay.com.

2. CUSTOMER'S QUALIFICATIONS

At all times, CUSTOMER shall be qualified and licensed as a health care professional in the state(s) in which he/she practices and be certified or eligible in his/her specialty and subspecialty. As a health care professional, CUSTOMER agrees to administer service, care and the Products strictly in accordance with XYMOGEN's directions and requirements and with all applicable laws and regulatory agency requirements.

3. NO INTERNET SALES

As a material condition precedent to this Agreement, Customer must execute and return XYMOGEN's 'No Internet Sales Policy,' a copy of which is attached hereto as Exhibit "A". The terms and conditions of XYMOGEN's No Internet Sales Policy are hereby adopted as if restated in their entirety herein. Without limiting, amending or modifying XYMOGEN's No Internet Sales Policy in any regard, CUSTOMER AGREES THAT IT WILL NOT RESELL, SELL, MAKE ANY REFERENCE TO PRICES/PRICING, DISPLAY XYMOGEN IMAGES, TRADEMARKS, REFERRAL CODES OR DISTRIBUTE ANY OF THE PRODUCTS USING THE INTERNET, ANY INTERNET SITE OR ANY OTHER ELECTRONIC MEDIUM OR DEVICE. CUSTOMER may, however, refer to XYMOGEN and the Products on its Internet Site and may include a link to XYMOGEN's website as set forth in XYMOGEN's No Internet Sales Policy. CUSTOMER shall abide by this Policy and any modifications which may, from time to time, be implemented by XYMOGEN.

4. PRIVATE LABEL SALES AND INTERNET SALES

As a material condition precedent to this Agreement, Customer must execute and return XYMOGEN's 'Private Label Sales Policy,' a copy of which is attached hereto as Exhibit "B". The terms and conditions of XYMOGEN's Private Label Internet Sales Policy are hereby adopted as if restated in their entirety herein. Without limiting, amending or modifying XYMOGEN's Private Label Sales Policy in any regard, CUSTOMER AGREES THAT IT WILL NOT MAKE ANY REFERENCE OR ASSOCIATION TO XYMOGEN, INCLUDING BUT NOT LIMITED TO XYMOGEN'S NAME, IMAGES, TRADEMARKS, PRODUCT NAMES OR UPC'S.

5. PHARMACY SALES

Licensed pharmacists may be eligible to purchase XYMOGEN formulas so long as formulas are not sold on the Internet nor is there any reference to prices/pricing on the Internet. XYMOGEN FORMULAS IN PHARMACIES MUST BE PLACED BEHIND THE COUNTER AND OUT OF SIGHT OF ITS CUSTOMERS.

6. TERMINATION AND LIQUIDATED DAMAGES

This Agreement may be terminated by either party at any time, with or without cause. CUSTOMER's failure to comply with the terms of this Agreement and/or XYMOGEN's No Internet Sales Policy and/or XYMOGEN's Private Label Sales Policy is a breach of contract, resulting in immediate termination of CUSTOMER's right to purchase any Products. It is stipulated that upon any breach of this Agreement by Customer, the amount of ONE HUNDRED AND 00/100 (\$100.00) DOLLARS per day shall serve as liquidated damages for each breach. Because the Parties agree and recognize that the actual amount of damages resulting from Customer's breach is difficult or impossible to determine, it is also agreed that this liquidated damages provision shall be cumulative and therefore supplementary to any other remedy existing by law, equity or statute. XYMOGEN reserves the right to enforce its statutory rights to recover damages against Customer for trademark infringement and the like.

7. **ENFORCEABILITY, CHOICE OF LAW, VENUE, AND JURISDICTION**

Failure to enforce any of the terms and conditions of this Agreement shall not be deemed a waiver of such terms or conditions, or of future rights to enforce all terms and conditions. Any dispute under this Agreement or related to this Agreement shall be decided in accordance with the laws of the State of Florida. Jurisdiction and venue shall rest exclusively in Orange County, Florida. Each party waives any and all rights to object to jurisdiction and venue in Orange County, Florida. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other legal or equitable relief to which such party may be entitled.

THE UNDERSIGNED REPRESENTS AND AFFIRMS THAT HE OR SHE HAS THE AUTHORITY TO BIND THE CUSTOMER AND/OR HAS BEEN GIVEN PROPER AUTHORITY BY THE CUSTOMER TO SIGN THIS CUSTOMER PROTECTION AGREEMENT AND ENTER INTO THIS TRANSACTION. RECEIPT OF THE REFERENCED 'NO INTERNET SALES POLICY' [EXHIBIT "A"] AND 'PRIVATE LABEL SALES POLICY' [EXHIBIT "B"] ARE ACKNOWLEDGED AND UNDERSTOOD.

By filling out the below signature section, you are signing this Agreement electronically. You agree your electronic signature is the legal equivalent of your manual/handwritten signature on this Agreement, and you consent to the legally binding terms and conditions of this Agreement. Please e-sign your signature using the following format: /s/ First Name Last Name

XYMOGEN

Signature 

Print Name: Brian J. Blackburn, President/CEO:

CUSTOMER: *(Print Name)* _____

Signature _____

Phone: _____ Fax: _____

Email: _____

EXHIBIT "A"

XYMOGEN LABEL NO INTERNET SALES POLICY

As valuable consideration for XYMOGEN's agreement to supply Products to Customer (as the terms "Products" and "Customer" are defined in the Parties' Customer Protection Agreement), Customer acknowledges and agrees as follows, and Customer shall abide by this Policy and any modifications hereto which may, from time to time, be implemented by XYMOGEN.

1. CUSTOMER SHALL NOT RESELL, SELL, MAKE ANY REFERENCE TO PRICES/PRICING OR DISTRIBUTE ANY OF THE PRODUCTS USING THE INTERNET, ANY INTERNET SITE OR ANY OTHER ELECTRONIC MEDIUM OR DEVICE WITHOUT XYMOGEN'S PRIOR WRITTEN APPROVAL. The term "Internet Site" shall include, but is not limited to, any World Wide Web site, USENET, newsgroup, bulletin board, server or other online service at any electronic domain name, address or location, or any other form of online service or other form of electronic commerce whatsoever.
2. CUSTOMER MAY REFER TO XYMOGEN AND THE PRODUCTS ON ITS INTERNET SITE AND MAY INCLUDE A LINK TO XYMOGEN'S WEBSITE; HOWEVER, CUSTOMER MAY INCLUDE SUCH REFERENCE AND/OR LINK ONLY WITH XYMOGEN'S PRIOR WRITTEN APPROVAL.
3. CUSTOMER SHALL NOT IDENTIFY, LIST OR POST ANY PRODUCT PRICES ON THE INTERNET WITHOUT XYMOGEN'S PRIOR WRITTEN APPROVAL.
4. CUSTOMER SHALL NOT PUBLICLY ADVERTISE THE PRODUCTS USING: 1) THE INTERNET (E.G., BANNER OR OTHER ADVERTISEMENT; 2) ANY OTHER ELECTRONIC MEDIUM; AND/OR 3) ANY PRINT MEDIUM.
5. CUSTOMER SHALL NOT PURCHASE "XYMOGEN" OR THE NAME OF ANY OF THE PRODUCTS AS GOOGLE ADWORDS™, NOR ANY ONLINE ADVERTISING, INCLUDING, BUT NOT LIMITED TO, FACEBOOK, YAHOO SHOPPING, AMAZON ADS AND THE LIKE.
6. IF XYMOGEN AUTHORIZES THE CUSTOMER TO REFER TO XYMOGEN AND/OR THE PRODUCTS ON ITS INTERNET SITE, CUSTOMER SHALL MAINTAIN ALL PRICES/PRICING, XYMOGEN IMAGES, TRADEMARKS, REFERRAL CODES OR DISTRIBUTION ANY OF THE PRODUCTS BEHIND A PASSWORD PROTECTED SITE THAT IS AVAILABLE ONLY TO THE CUSTOMER'S PATIENTS AND NOT TO THE GENERAL PUBLIC. THE FOLLOWING DISCLAIMER MUST BE INCLUDED WHEREVER XYMOGEN PRODUCTS ARE MENTIONED:

LEGAL NOTICE

XYMOGEN's Exclusive Professional Formulas are available through select licensed health care professionals. The Internet sale and discounting of XYMOGEN formulas are strictly prohibited. YourWebsite.com makes XYMOGEN formulas available only to patients of our clinic. If you are a patient of Clinic Name, you may inquire about XYMOGEN by calling Clinic phone number.

7. IF XYMOGEN AUTHORIZES CUSTOMER TO LIST PRODUCT PRICES ONLINE, SUCH PRICES SHALL BE PASSWORD PROTECTED AND AVAILABLE ONLY TO PATIENTS OR CUSTOMER THROUGH THE USE OF A PASSWORD. ACCESS TO THE PRICING INFORMATION MUST BE LIMITED TO CUSTOMER AND CUSTOMER'S PATIENTS ONLY
8. CUSTOMER AGREES THAT THE GENERAL PUBLIC CANNOT PLACE AN ORDER FOR XYMOGEN PRODUCTS THROUGH CUSTOMER'S WEBSITE. ANY PATIENT SEEKING TO PURCHASE XYMOGEN PRODUCT ONLINE MUST BE REFERRED BACK TO THE CUSTOMER BY THE DISPLAY OF THE ABOVE DISCLAIMER.
9. XYMOGEN RESERVES THE RIGHT TO DISCONTINUE SALES TO CUSTOMER AND ALL OUTSTANDING AMOUNTS FOR PRODUCTS SHIPPED WILL BECOME IMMEDIATELY DUE AND PAYABLE.
- 10 XYMOGEN RESERVES THE RIGHT TO ENFORCE ITS STATUTORY RIGHTS TO RECOVER DAMAGES AGAINST CUSTOMER FOR TRADEMARK INFRINGEMENT.

The approvals referenced above may be withdrawn, rescinded and/or revoked by XYMOGEN at any time for any reason or no reason at all at XYMOGEN's exclusive and unfettered discretion.

Customer's failure to comply with the aforementioned items regarding this Policy will result in, among other things, the immediate termination of the Parties' Customer Protection Agreement, and will subject Customer to all damages, costs and fees available to XYMOGEN under the Customer Protection Agreement and Florida law.

PRIVATE LABEL formulas are required to abide by the terms and conditions of XYMOGEN's Private Label Sales Policy (Exhibit "B") and any modifications thereto which may, from time to time, be implemented by XYMOGEN.

By filling out the below signature section, you are signing this Agreement electronically. You agree your electronic signature is the legal equivalent of your manual/handwritten signature on this Agreement, and you consent to the legally binding terms and conditions of this Agreement. Please e-sign your signature using the following format: /s/ First Name Last Name

CUSTOMER: (Print Name) _____

Signature _____

EXHIBIT "B"

PRIVATE LABEL SALES POLICY

As valuable consideration for XYMOGEN's agreement to supply Private Label Products to Customer (as the terms "Products" and "Customer" are defined in the Parties' Customer Protection Agreement), Customer acknowledges and agrees as follows, and Customer shall abide by this Policy and any modifications hereto which may, from time to time, be implemented by XYMOGEN.

1. PRIVATE LABEL PRODUCTS ARE INTENDED TO CREATE BRAND RECOGNITION FOR THE CUSTOMER WITH NO ASSOCIATION WHATSOEVER TO XYMOGEN.
2. IN GENERAL, CUSTOMER MAY NOT REFER TO THE PRIVATE LABEL PRODUCTS AS BEING XYMOGEN FORMULAS, OR IN ANY OTHER WAY ASSOCIATED WITH XYMOGEN (INCLUDING, BUT NOT LIMITED TO, "BY XYMOGEN" AND/OR "COMPARABLE TO XYMOGEN") AND/OR BY USING THE INTERNET, ANY INTERNET SITE OR ANY OTHER ELECTRONIC MEDIUM OR DEVICE. The term "Internet Site" shall include, but is not limited to, any World Wide Web site, USENET, newsgroup, bulletin board, server or other online service at any electronic domain name, address or location, or any other form of online service or other form of electronic commerce whatsoever.
3. CUSTOMER MAY NOT MAKE ANY ASSOCIATION TO XYMOGEN BY WAY OF THE USE OF THE XYMOGEN BRAND NAME, TRADEMARKS OR IMAGES, XYMOGEN PRODUCT NAMES, XYMOGEN UPC'S, THROUGH THE USE OF KEYWORDS, METADATA OR ANY OTHER SEO STRATEGY, AND/OR USE OF THE XYMOGEN NAME BEING LISTED ON THE AMAZON BRAND REGISTRATION APPLICATION.
4. CUSTOMER SHALL NOT PURCHASE AS KEYWORDS "XYMOGEN" OR THE NAME OF ANY OF THE PRODUCTS AS GOOGLE ADWORDS™, OR ANY OTHER ADVERTISING WHATSOEVER USING THE XYMOGEN NAME, TRADEMARKS, ANY XYMOGEN PRODUCT NAME OR XYMOGEN UPC'S.
5. CUSTOMER'S ANSWERS TO Q&A REVIEWS MAY NOT CONTAIN USE OF THE XYMOGEN NAME OR ANY XYMOGEN PRODUCT NAME, OR IN ANY WAY ASSOCIATE OR LINK THE PRIVATE LABEL PRODUCT TO XYMOGEN.
6. XYMOGEN RESERVES THE RIGHT TO DISCONTINUE SALES TO CUSTOMER AND ALL OUTSTANDING AMOUNTS FOR PRODUCTS SHIPPED WILL BECOME IMMEDIATELY DUE AND PAYABLE.
7. XYMOGEN RESERVES THE RIGHT TO ENFORCE ITS STATUTORY RIGHTS TO RECOVER DAMAGES AGAINST CUSTOMER FOR TRADEMARK INFRINGEMENT.

Customer's failure to comply with the aforementioned items regarding this Policy will result in, among other things, the immediate termination of the Parties' Customer Protection Agreement, and will subject Customer to all damages, costs and fees available to XYMOGEN under the Customer Protection Agreement and Florida law.

XYMOGEN LABEL formulas are required to abide by the terms and conditions of XYMOGEN's 'No Internet Sales Policy' (Exhibit "A") and any modifications thereto which may, from time to time, be implemented by XYMOGEN.

By filling out the below signature section, you are signing this Agreement electronically. You agree your electronic signature is the legal equivalent of your manual/handwritten signature on this Agreement, and you consent to the legally binding terms and conditions of this Agreement. Please e-sign your signature using the following format: /s/ First Name Last Name

CUSTOMER: (*Print Name*) _____

Signature _____

RETURN POLICY

We stand behind our products 100%, and your complete satisfaction is our goal. If you experience any fulfillment, shipping, or quality issues with an order, such as an incomplete or incorrect order, or if any damage occurred during shipping, please contact us within five business days to obtain your Return Authorization Number and begin the return process.

No other product returns are accepted, unless the product was ordered in error. In order to receive a credit for a returned product, you must notify, and get approval from, one of our customer service representatives within five business days of receiving the order. Please contact us before shipping any product back for a return, as we will not accept any returns received without a Return Authorization Number, generated by XYMOGEN. All credits will be applied back to your account and will be available for future orders. All returns are subject to a 15% restocking fee.

To receive credit for returned product(s), you must:

- Notify Customer Service at (800) 647-6100 within five business days of receiving the order to report the error or issue.
- Include your Return Authorization Number, provided by XYMOGEN Customer Service, on the Return Form.
- Ensure that any products ordered in error remain un-opened, un-marked, and in a sellable condition.
- Make sure that it is a XYMOGEN formula that is currently available in inventory, and not a Private Label formula.

PLEASE NOTE: XYMOGEN does not authorize any credits for returned Private Label formulas, PersonaLogix or MedPax orders.

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Printed Name: _____

Signature: _____ Date _____

Patient Direct Ordering

Are you interested in offering your patients ordering privileges on XYMOGEN.com?

Yes

No

If you consent to patient direct ordering, you acknowledge that you are the owner of the practice and permitted to receive commissions.

We are pleased to offer you the option of patient-direct ordering. In order to set up your account to allow your patients to order directly from XYMOGEN, please complete the Form W-9 below. Upon accumulating a minimum of \$150.00 in commissions, a check will be issued to your account on or about the end of the month from sales of the previous month/s.

Please note that by electing to participate in patient-direct ordering, your patients will have access to online ordering through XYMOGEN.com. To complete this request, it is required that a REFERRAL CODE be created. This will allow the patients to create their own account on XYMOGEN.com without having to call into the Customer Service Department. Your code may be any combination of alpha and/or numeric characters, with a minimum of 4 and maximum of 15 characters. Please remember, your referral code may NOT be posted publicly on your personal website and should only be shared with your patients after consultation.

Requested Referral Code: _____