

## GENERAL TERMS AND CONDITIONS OF MERCK CANADA INC.

These General Terms and Conditions (the “**T&Cs**”) govern all direct purchases and returns of any prescription pharmaceutical and vaccine products (“**Products**”) sold by Merck Canada Inc. (“**MERCK CANADA**”) as of February 15, 2016, in Canada, to the first Purchaser (defined below) of any such Products. Any order for Products placed by a Purchaser shall irrevocably and unconditionally constitute such Purchaser’s acceptance of and agreement to be bound by these T&Cs with respect to the purchase of such Products.

### 1. ORDERS

- 1.1 Orders may be placed by calling the MERCK CANADA Order Management Center at 1-800-4MERCK1 (1-800-463-7251), by fax to 1-800-563-7251, by email at [montreal.orderdesk@merck.com](mailto:montreal.orderdesk@merck.com) or by Electronic Data Transfer (EDI).
- 1.2 MERCK CANADA’s Products are sold only to MERCK CANADA authorized purchasers, including but not limited to retail pharmacies, wholesalers, chain distributors, hospitals, pharmacies, government, licensed Physicians, physician clinics and nurse practitioner, which have a valid license to possess or handle Products and fully comply with all applicable laws and regulations (collectively, the “**Purchaser(s)**”).
- 1.3 For the purposes of this Section 1.3, the term “**minimum order value**” shall be defined as the net effective price of the Products(s) only and does not include additional charges in the order, such as without limitation, shipping charges and taxes.
  - 1.3.1. **Retail Pharmacies, Wholesalers and Chain Distributors** - Unless otherwise agreed to by MERCK CANADA in writing, any order for prescription pharmaceutical Products or for any order consisting of a combination of prescription pharmaceutical and vaccine Products placed by retail pharmacies, wholesalers and chain distributors must have a minimum order value of C\$ 5,000.00 per order.
  - 1.3.2. **Government, Licensed Physicians, Physician Clinics, Nurse Practitioners** - Unless otherwise agreed to by MERCK CANADA in writing, any order placed by any municipal, provincial, federal, or other governmental or regulatory authority, licensed physician, physician clinic, or nurse practitioner, must have a minimum order value of C\$ 400.00 per order.
- 1.4 Purchaser must maintain an adequate financial condition satisfactory to MERCK CANADA and substantiate such condition with financial statements or as otherwise requested from time to time by MERCK CANADA. MERCK CANADA reserves the right to refuse credit terms to any Purchaser that, in MERCK CANADA’s sole determination, has not or refuses to disclose appropriate information including, without limitation, audited financial statements.
- 1.5. MERCK CANADA has the right, prior to processing and shipping an order, to require receipt of cash payment in advance, security or proof of financial viability satisfactory to MERCK CANADA. MERCK CANADA reserves the right to hold orders on accounts with past due balances until such items are resolved to MERCK CANADA’s satisfaction. Remedies provided herein shall be in addition to, and not in lieu of, other remedies available at law.
- 1.6 All orders placed with MERCK CANADA by Purchaser are subject to the approval of MERCK CANADA. MERCK CANADA may in its sole discretion refuse any order. The obligation of MERCK CANADA to supply any Products is at all times furthermore subject to the condition that MERCK CANADA is able to make or obtain a sufficient supply of such Products. Partially filling an order does not obligate MERCK CANADA to fill the remainder of the order. MERCK CANADA shall not, under any circumstance, incur any liability whatsoever for any delays in delivery or any incapacity, inability, refusal or default to supply any Products.

### 2. DELIVERY, TITLE AND RISK OF LOSS

- 2.1 Unless otherwise mutually agreed to by MERCK CANADA and any particular Purchaser, MERCK CANADA shall, in its sole discretion, determine the time, route and carrier of all shipments of Products.
- 2.2 MERCK CANADA will pay transportation costs, except those costs that result from Product returns, special routing requested by Purchaser, or required special transportation arrangements. If special delivery services are requested by Purchaser or required, the difference between standard Merck transportation charges and the charges for special delivery services may be added to Purchaser’s invoice.
- 2.3 Title to the Products and risk of loss shall pass to the Purchaser as follows:
  - (i) Upon delivery to the Purchaser’s designated receiving location by the MERCK CANADA selected carrier; or,
  - (ii) Upon delivery to the carrier at MERCK CANADA’s shipping dock when the Purchaser has arranged for transportation of the Products; or,
  - (iii) Upon delivery to the carrier at MERCK CANADA’s shipping dock when the Purchaser changes the carrier’s delivery timing by more than twelve (12) hours, while the Products are in transit.

In the case of Section 2.3 (ii) and (iii) above, MERCK CANADA shall not be responsible for Products in the possession of a carrier, and shall not be liable for any failure to deliver by the carrier, or loss or damage in transit and shall be under no obligation to replace Products so lost or damaged. In such cases, all claims for failure to deliver, or for loss or damage in transit, must be made by the Purchaser against the carrier.

- 2.4 Upon Purchaser's request, MERCK CANADA will assist in providing proof of delivery documentation, provided that said Purchaser's request is made within ninety (90) days from date of invoice.
- 2.5 The Purchaser shall immediately report to MERCK CANADA in writing any in-transit loss or shortage of Products.

### 3. SHIPMENTS

- 3.1 **Shipping Days for Temperature Control Products** - Shipment of vaccines or any other Products that require special temperature handling will be shipped on specific days. For further details, please contact the MERCK CANADA Order Management Center at 1-800-4MERCK1 (1-800-463-7251).
- 3.2 **Wholesale/Pharmacy Chain Distributors** - For the sale of Products to wholesalers and pharmacy chain distributors, MERCK CANADA reserves the right (i) to sell and ship Products by full case or multiples, and (ii) to consolidate orders.

### 4. PRICES AND TAXES

- 4.1 Orders will be invoiced at prices in effect at the time Purchaser's order is received, in accordance with the current MERCK CANADA list price of Products, which list price is exclusive of all taxes. All prices are subject to change without notice. No price adjustment shall be allowed for inventory on hand or en route to Purchaser because of a price change, unless otherwise indicated by MERCK CANADA, in writing, at the time of the price change.
- 4.2 Prices do not include Federal, provincial or other government sales tax that may apply to the sale, purchase, manufacture, delivery, storage, processing or use of any Products. The purchaser shall be responsible for any amount related to sales tax which MERCK CANADA may be required to remit or collect under existing or any future law, which amount shall be added to the invoice and paid by the Purchaser.

### 5. PAYMENT

- 5.1 All payments for Products are due thirty (30) days from the date of invoice.
- 5.2 Payment must be made in full to the lockbox location indicated on the MERCK CANADA invoice by the due date. Payment is recognized when received at the lock-box location.
- 5.3 No deductions, including without limitation, administration fees, anticipation allowance or early payment allowance may be applied by Purchaser to Purchaser's payments and no rights of set-off or counterclaim are allowed.
- 5.4 MERCK CANADA reserves the right to charge an amount equal to 1.5% per month (18% per annum) on the amount of any unpaid balance calculated from the date that payment is due until the date that payment is received in full by MERCK CANADA. Such interest rates are subject to change without notice based on prevailing rates.

### 6. PURCHASER CLAIMS

- 6.1 **Claims for Delivery of Incorrect or Damaged Products During Shipment:** It shall be the Purchaser's responsibility to report to MERCK CANADA any incorrect Products shipments or any Products damaged during shipment, within five (5) working days of delivery to Purchaser's or local carrier's depot, to the MERCK CANADA Order Management Center at 1-800-4MERCK1 (1-800-463-7251) or by fax to 1-800-563-7251. Purchaser shall indicate all immediately visible damages to Products on the carrier's bill of lading before signature by Purchaser of said bill of lading. MERCK CANADA shall not assume responsibility for any claim by Purchaser for incorrect Products shipment or Products damaged during shipment if Purchaser does not strictly comply with the foregoing. Under no circumstances are Products to be given to the carrier or any other third party for salvage or resale.
- 6.2 **Other Purchaser Claims:** All other claims must be received by Merck Order Management Center within forty-five (45) days of the date of the delivery of the concerned Products.

## 7. LIMITATION OF LIABILITY

The liability of MERCK CANADA under any order shall not, under any circumstances whatsoever, exceed the amount of the invoice price paid or payable thereunder for the Products sold and delivered thereunder. MERCK CANADA shall not be liable for any indirect, consequential, special, incidental, exemplary or punitive damages or similar damages or losses of any nature whatsoever, including, without limitation, for any loss of clientele, sales or profits, regardless of whether arising from breach of contract, warranty, tort, delict, quasi-delict, strict liability or otherwise and, even if MERCK CANADA is advised of the possibility of such damage or loss or if such damage or loss could have been reasonably foreseen.

## 8. WARRANTY

All Products delivered shall (1) meet Products specifications, and (2) be manufactured at Health Canada approved facilities in accordance with current Good Manufacturing Practices and applicable laws. All other warranties, express or implied, including but not limited to warranties of merchantability and fitness for a particular purpose, are hereby disclaimed.

## 9. RETURN POLICIES

### 9.1 Policy Regarding Returns for Credit

#### 9.1.1 **General Conditions – Product Returns for Credit**

MERCK CANADA will accept Product returns for credit for Eligible Products (as defined in Section 9.1.2) only and subject to the following conditions:

- (i) All returns must be made according to this Policy Regarding Returns for Credit and comply with all applicable laws and regulations;
- (ii) All returns must be accompanied with documentation identifying the Purchaser's name, address, name of returned Products(s), quantity of goods returned and reason for the return;
- (iii) Narcotic and controlled drugs, may only be returned with prior written authorization from MERCK CANADA;
- (iv) MERCK CANADA representatives are not permitted to pick up returned Products. All returned Products must be returned in the same condition as they were received and shipped "FREIGHT PREPAID" to MERCK CANADA at the following address: Stericycle ULC, 25 Ironside Crescent, Toronto, Ontario, M1X 1G5 ;
- (v) The Purchaser retains title to and responsibility for any returned Products until received and accepted by MERCK CANADA or its service provider;
- (vi) Credits for returned Products will be issued in the form of a credit note only, in accordance with the terms set forth in Section 9.1.4;
- (vii) The Purchaser is responsible for all transportation charges with regards to the returned Products. MERCK CANADA will not pay or give credit for transportation, service, handling, or processing fees. If Products are returned collect, and MERCK CANADA, in its sole discretion, accepts delivery thereof, then the related costs assumed by MERCK CANADA, plus applicable taxes, will be deducted from the credit note to be issued to the Purchaser;
- (viii) Returned Products will not be returned to the Purchaser and shall be destroyed by MERCK CANADA, even if no credit is issued for such returned Products; and
- (ix) The Purchaser shall ensure that any defective, damaged or expired Products not returned to MERCK CANADA pursuant to the terms set forth herein will be appropriately and safely destroyed. MERCK CANADA may request proof of such destruction, at its sole discretion.

#### 9.1.2 **Eligible Products**

Subject to the conditions set forth in Section 9.1.1 above, MERCK CANADA will accept returns for credit for the following Products only, provided (a) they are in their original containers bearing their original MERCK CANADA packaging, (b) were purchased directly from MERCK CANADA and (c) their total value exceeds C\$100.00 :

- (i) Products that have been expired for no more than twelve (12) months;
- (ii) Products in the form of tablets with less than three (3) months shelf-life left prior to the expiry date. For purposes of clarity, all such Products which are not in the form of tablets, shall not be eligible for credit under this Section 9.1 and will necessarily be destroyed by MERCK CANADA pursuant to Section 9.2;
- (iii) Products that are recalled;
- (iv) Products that are discontinued are eligible for return, but only after 3 months of the discontinuation; and
- (v) Products having a manufacturing defect provided they are returned within 3 months of knowledge thereof.

(collectively, "**Eligible Products**")

#### 9.1.3. **Non-Eligible Products**

Notwithstanding any other provision contained herein, the following Products shall NOT be eligible for return for credit:

- (i) Products Samples;
- (ii) Products which MERCK CANADA determines, in its sole discretion, have been repackaged, re-stickered, reconstituted, damaged, tampered or otherwise altered in any way;
- (iii) Products returned in a deteriorated condition (including improper storage, such as exposure to heat, cold, water, etc.);
- (iv) Partially dispensed liquids, lotions, ointments, creams, gels, vials or syringes;
- (v) Products purchased on a non-returnable basis;
- (vi) Products ordered in error;
- (vii) Products illegally imported into Canada, Counterfeit Products and/or diverted Products;
- (viii) Products on which the lot number and/or expiration date on the original container is missing, illegible and/or covered; and
- (ix) Except as set forth in Section 9.1.2 (ii), Products that are not yet expired.

#### 9.1.4. Value of the Credit Note

- (i) Subject to section 9.1.4 (iii) below, Eligible Products returned under the Returns for Credit Policy shall, even if accompanied by the original invoice or packing slip, be credited up to a maximum of 95% of MERCK CANADA's current list price ("**Eligible Credit Amount**"). Notwithstanding the foregoing, the Eligible Credit Amount for short dated Products (i.e. with less than six (6) months before expiry) sold and shipped by MERCK CANADA, shall be 100% of the invoiced price.
- (ii) To qualify for a credit under this Section 9.1, partial bottles and/or packages of returned Eligible Products must be at least  $\frac{1}{4}$  full.
- (iii) Credit for bottles and packages of Eligible Products shall be calculated as follows:
  - 0 to 24% part bottle/package: NO CREDIT;
  - 25 to 49% part bottle/package: 25% of the Eligible Credit Amount;
  - 50 to 74% part bottle/package: 50% of the Eligible Credit Amount;
  - 75 to 99% part bottle/package: 75% of the Eligible Credit Amount;
  - Full bottle/package: 100% of the Eligible Credit Amount.

#### 9.2 Policy Regarding Returns for Disposal

Products not eligible for return for credit under Section 9.1 above may be returned to MERCK CANADA for disposal and destruction, subject to the Products being returned, freight prepaid, to the following MERCK CANADA facility with a label clearly indicating "FOR DESTRUCTION ONLY": MERCK CANADA, FOR DESTRUCTION ONLY, c/o Stericycle ULC, 25 Ironside Crescent, Toronto. Ontario, M1X 1G5.

### 10. USE, STORAGE AND TRANSPORTATION

- 10.1 All Products must be used, stored and transported in accordance with the specific conditions contained in the respective Products' monograph(s). In particular, vaccines and other temperature sensitive Products must be handled and stored by Purchaser in a manner that ensures that these Products are maintained at temperatures set out in their respective Products' monograph(s).
- 10.2 The Purchaser is fully responsible for ensuring that it has the proper facilities in place for the appropriate storage, handling and distribution of all ordered Products. The Purchaser shall fully comply with all applicable laws and regulations and take all necessary precautions to prevent Products from falling into the hands of those who may not lawfully possess or handle Products. Purchaser warrants and agrees not to stock any counterfeit goods, diverted Products, Products that are illegally imported into Canada, expired Products, or Products that have been used, opened, repackaged, or otherwise tampered with.
- 10.3 The Purchaser agrees not to delete, destroy, or alter in any manner trademarks and other proprietary rights and intellectual property or trade notices, markings and legends of MERCK CANADA on the Products as delivered by MERCK CANADA.
- 10.4 Unless specifically authorized in writing by MERCK CANADA, the Products may not be re-sold nor donated, for salvage or otherwise, by the Purchaser to any third party.

### 11. NO EXPORT OR TRANS-SHIPING FOR EXPORT

Products purchased from MERCK CANADA are approved by Health Canada for sale and resale in Canada only and are NOT FOR EXPORT. No license, express or implied, is granted with respect to these Products under intellectual property rights existing under the laws of the United States or any other country outside of Canada. Exporting, or permitting the export of these Products, may violate laws and infringe intellectual property rights in other countries. Purchasers may not at any time, either directly or indirectly, export out of Canada any MERCK CANADA Products. This includes not selling, facilitating the sale of, transferring, or distributing Products to any person or entity whom the Purchaser has reason to believe, or reasonably ought to have reason to believe, will or may export any MERCK CANADA Products outside of Canada.

## 12. INTERPROVINCIAL TRANSFERS

In the event the Purchaser is a wholesaler, distributor or other reseller of Product and directly or indirectly carries on business in more than one province or territory of Canada, then in order to be eligible for any reimbursement and determine any credits payable to MERCK CANADA, such Purchaser shall comply with the following:

- (a) Within 30 days following the end of each month, such Purchaser shall deliver to MERCK CANADA a report detailing (i) the quantity and gross sales price of each Product sold by such Purchaser during such month, on a province/territory by province/territory basis, (ii) the quantity and price of each Product sold by such Purchaser in such month in a province or territory which is different from the province or territory in which such Product was purchased by such Purchaser (the “**Inter-Provincial Product**”), and (iii) such other information as MERCK CANADA may reasonably request to confirm the point of purchase and point of sale of each Product purchased and sold by such Purchaser;
- (b) If the list price paid by such Purchaser to MERCK CANADA for a Inter-Provincial Product exceeds the price of such Inter-Provincial Product, then MERCK CANADA shall reimburse to Purchaser the amount of such excess within thirty (30) days of receipt of such report but if the price of an Inter-Provincial Product for such month exceeds the list price paid by such Purchaser to MERCK CANADA for such Inter-Provincial Product, then Purchaser shall pay to MERCK CANADA the amount of such excess as a credit to the price for such Inter-Provincial Product, within thirty (30) days of the end of such month;
- (c) For the purpose of the foregoing, the point of purchase of each Product shall be the ship to destination indicated to MERCK CANADA for the delivery by MERCK CANADA of such Product and the point of sale of such Product shall be the location where the third party customer of such Purchaser purchases such Product;
- (d) In the event any such Purchaser is in default in the timely remittance of any monthly report or payment of any credit required pursuant to the foregoing provisions of this Section 12, then in addition to any other rights or remedies MERCK CANADA may have, MERCK CANADA may, in its sole discretion, refuse to deliver Products to certain locations; and
- (e) MERCK CANADA may upon reasonable notice perform such audit with its own personnel or hire an independent auditing firm to perform such audit of the books and records of such Purchaser in order to confirm the point of purchase of each Product and point and sale and Price of each Product purchased and sold by such Purchaser and such Purchaser shall use its best efforts to assist in the conduct of such audit.

## 13. BREACH OF T&CS

Should the Purchaser fail to comply with these T&Cs, or should MERCK CANADA have reasonable grounds for believing that the Purchaser has breached or intends to breach these T&Cs, MERCK CANADA may, in its sole discretion, (i) limit, suspend or refuse, in whole or in part, to make further sales to such a Purchaser and its affiliates, (ii) suspend any credit terms granted to such Purchaser and its affiliates, (iii) if such a Purchaser is supplied by MERCK CANADA authorized distributors, suspend or refuse its approval of sales by such MERCK CANADA authorized distributors, or (iv) seek other legal remedies available to MERCK CANADA, including without limitation, damages.

## 14. REPORTING OF PURCHASE DATA

MERCK CANADA authorized distributors and wholesalers of Products are required to report all sales of MERCK CANADA Products (including historical sales data) to MERCK CANADA and/or to any third party designated by MERCK CANADA, such as IMS Health. Reports are to be provided in a format and at such intervals as MERCK CANADA may instruct from time to time. The information received by MERCK CANADA will be held in confidence and used solely by MERCK CANADA with respect to terms of sale and sales policies in compliance with applicable law (including legislation governing the privacy of personal information). Failure on the part of any authorized distributor or wholesaler to provide this information may require MERCK CANADA to suspend or refuse sales until such time as the authorized distributor or wholesaler agrees to provide this information.

## 15. GENERAL PROVISIONS

**15.1 Force Majeure** - MERCK CANADA shall not be liable for delay or failure of performance or omissions occasioned by causes beyond its control, including but not limited to, labour disturbances, riots, acts of terrorism, fires, floods, storms, disorders, hostilities, expropriation or confiscation of properties, failure or a delay of carriers, interference by civil or military authorities, whether legal or de facto, acts of God.

**15.2 Precedence and Modifications** - Each order placed by a Purchaser shall automatically be deemed to be issued pursuant to and governed by these T&Cs, and to include all of the terms and provisions of these T&Cs. These T&Cs shall have precedence over any additional or different terms and conditions stipulated in any present or future contract, quotation, purchase order, acknowledgement, invoice, order, proposal or other document issued by Purchaser. Neither performance by MERCK CANADA nor receipt of payment shall be deemed or construed as acceptance by MERCK CANADA of Purchaser's additional or different terms and conditions unless otherwise agreed to in a written agreement signed by an authorized representative of MERCK CANADA.

Notwithstanding anything to the contrary in this Section, MERCK CANADA has the unilateral right to modify these T&Cs at any time, at its sole discretion. Notice of any changes will be provided only if MERCK CANADA deems such changes to be material. Such notice may be given to the Purchaser by fax, e-mail or other electronic means. Any order for MERCK CANADA Products made after receipt of such a notice is subject to the MERCK CANADA T&Cs then in effect.

- 15.3 **Severability** - If any term or provision of these T&Cs or the application thereof is held to be invalid or unenforceable, then such term or provision shall be severed from these T&Cs and the remainder of these T&Cs shall be unaffected thereby and each remaining term or provision of these T&Cs shall be valid and be enforced to the fullest extent permitted by law.
- 15.4 **Governing Law and Jurisdiction** - These T&Cs and all orders for Products are subject to and shall be governed and construed in accordance with the laws in force in the Province of Quebec and Purchaser agrees to submit to the jurisdiction of the courts of the Province of Quebec.
- 15.5 **English Language** - The parties hereto confirm it is their wish that the present Terms and Conditions be drawn up in the English language. *Les parties aux présentes confirment leur volonté que le présent document énonçant les Termes et Conditions soit rédigé en anglais.*

MERCK CANADA INC., February 15, 2016