



GENERAL TERMS AND CONDITIONS OF MERCK CANADA INC.:

These General Terms and Conditions (the “T&Cs”) govern the sale of any pharmaceutical or vaccine product (“**Product**”) by Merck Canada Inc. (“MERCK CANADA”) as of February 7th, 2011, in Canada and apply solely to the first buyer of any such Product directly from MERCK CANADA (“**Purchaser**”). Any order for Product 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 Product.

1. ORDERS

- 1.1 Orders may be placed by calling the MERCK CANADA Order Desk at 1-800-4MERCK1 (1-800-463-7251) or by fax to 1-800-563-7251.
- 1.2 **Retail Pharmacies, Wholesalers, Distributors:** Unless MERCK CANADA otherwise agrees in writing, MERCK CANADA requires a minimum net order value of C \$5000.00 for any order for pharmaceutical Products or for any order consisting of a combination of pharmaceutical and vaccine Products placed by retail pharmacies wholesalers, and distributors. Vaccine-only purchase orders require a minimum net order value of C \$1000.00.
- 1.3 **Government, Licensed Physicians, Physician Clinics, Nurse Practitioners:** Unless MERCK CANADA otherwise agrees in writing, MERCK CANADA requires a minimum net order value of C \$400.00 for orders placed by any municipal, provincial, federal, or other governmental or regulatory authority, licensed physician, physician clinic, or nurse practitioner.
- 1.4 Orders not conforming to the order value minimums listed above will not be processed. Notwithstanding anything contained herein and without in any way limiting the generality of the foregoing, MERCK CANADA, at its sole discretion, may grant exceptions to these requirements for new Product placement, Products requiring special distribution or handling, or for any other reason.

2. GUARANTEE

All Products are guaranteed, at the time of delivery by MERCK CANADA: (1) to meet the Product specifications; (2) to have been manufactured in accordance with Current Good Manufacturing Practices prescribed by Health Canada; and (3) to have been manufactured at facilities that have been approved by Health Canada and that are in accordance with all applicable laws.

3. DISTRIBUTION AND DELIVERY

- 3.1 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 Product is at all times furthermore subject to the condition that MERCK CANADA is able to make or obtain a sufficient supply of such Product. 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 Product.
- 3.2 Unless 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 Product.
- 3.3 MERCK CANADA will pay transportation costs, except those costs that result from special routing requested by Purchaser or that require special transportation arrangements. If special delivery services are requested, the difference between ordinary ground transportation charges and the charges for special delivery services will be added to Purchaser’s invoice.

4. SHIPPING DAYS FOR TEMPERATURE CONTROL PRODUCTS

Shipment of vaccines or any other Products that require special temperature handling will only be shipped by MERCK CANADA on Mondays, Tuesdays and Wednesdays. Please contact the MERCK CANADA Order Desk for details at 1-800-4MERCK1 (1-800-463-7251) or by fax to 1-800-563-7251.

5. 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.

6. CLAIMS FOR DELIVERY OF INCORRECT PRODUCTS AND CLAIMS FOR PRODUCTS DAMAGED DURING SHIPMENT

It shall be the Purchaser’s responsibility to report to MERCK CANADA at 1-800-463-7251, within 5 working days of delivery to Purchaser’s or local carrier’s depot, any incorrect Product shipments or any Product damaged during shipment. Purchaser shall indicate all immediately visible damage 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 Product shipment or Product damaged during shipment if Purchaser does not strictly comply with the foregoing.

8. PROOF OF DELIVERY

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.

9. PRICES

Invoices for Products ordered by Purchaser shall reflect the then current MERCK CANADA list price of Products at the time of Purchaser’s order; which price list is exclusive of all taxes. Due to market fluctuations, all prices are subject to change without notice. Orders will be invoiced at prices in effect at the time of order; no price adjustment shall be made on previously placed orders.

10. TAXES

Prices do not include federal, provincial, or other governmental charges upon or with respect to the sale, purchase, manufacture, delivery, storage, processing, use or consumption of any Products. The amount of any such charges which MERCK CANADA may be required to pay or collect (other than income taxes), under existing or any future law, shall be for the account of the Purchaser and added to the invoice.

11. PAYMENT

- 11.1 Payment must be made in full to the lock-box location indicated on the MERCK CANADA invoice for Product without any unauthorized deductions, including, without limitation, administration fees or early payment allowance and without any right of set-off or counterclaim.
- 11.2 Payment is recognized when received at the lock-box location.
- 11.3 MERCK CANADA may 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 payment is received in full by MERCK CANADA. Such interest rates are subject to change without notice based on prevailing rates.

12. TERMS OF SALE

- 12.1 All payments for Product are due thirty (30) days from the date of invoice unless otherwise specified by MERCK CANADA.
- 12.2 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. Remedies provided herein shall be in addition to, and not in lieu of, other remedies available at law.
- 12.3 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. In addition, should MERCK CANADA, in its sole discretion, have reason to believe that the Purchaser is or intends to breach these T&Cs, MERCK CANADA reserves the right to immediately suspend any credit terms granted to Purchaser or, without limiting the generality of Section 3 above, refuse further sales to said Purchaser.

13. LABELS/CARTONS

MERCK CANADA will not supply loose labels, cartons or empty packages bearing the MERCK CANADA name.

14. FORMULA CHANGES

The Product formulas are subject to change without prior notice. Revised legal requirements or changes in indications or components are among the several reasons for a formula change.

15. PRODUCT INFORMATION

Detailed Product information is available to physicians and pharmacists upon request.

16. RETURN POLICY

16.1. Return For Credit Policy

16.1.1 **Return for credit policy** – Subject to Sections 16.1.4 and 16.2 below, MERCK CANADA's return for credit policy applies solely to Products which are eligible for return for credit in accordance with the provisions of Section 16.1.2 below. Products not purchased directly from MERCK CANADA are excluded from application of the return for credit policy.

16.1.2 **Products eligible for return for credit** – Subject to the conditions set out in these T&Cs, including but not limited to those set out in Section 16.1.4 below, the following Products are eligible for return for credit provided they are in their original packages:

- (a) Products that have been expired for no more than twelve (12) months;
- (b) Products that are recalled or discontinued;
- (c) Products having a manufacturing defect; or
- (d) Products authorized in writing by MERCK CANADA to be returned.

16.1.3 **Product not eligible for return for credit** – Notwithstanding any other provision contained herein, the following Products SHALL NOT be eligible for return for credit:

- (a) Products not in original MERCK CANADA packaging, or Products which have been repackaged, stickered, reconstituted or altered in any way;
- (b) Expired Products returned more than 12 months after their expiry;
- (c) Except as set forth in Sections 16.1.2(b) and (D), Products that are not expired;
- (d) Samples and repackaged Products;
- (e) Partial liquids, lotions, ointments, creams, gels, vials or syringes;
- (f) Products that have been damaged or tampered in any way;
- (g) Products purchased on a non-returnable basis, including, without limitation, those indicated in Section 16.1.3;
- (h) Products not purchased directly from MERCK CANADA, including without limitation Products purchased through a government program or from wholesalers, pharmacy chains or distributors;
- (i) Products ordered in error; and
- (j) Items identified on price list as "service items".

16.1.4 **General conditions for the Return for credit policy** - MERCK CANADA will accept Product returns for credit where the Product is eligible for return pursuant to Sections 16.1.2 and 16.1.3 hereof, solely upon the following conditions:

- (a) All returns must be accompanied with documentation identifying the Purchaser's name, address, Products name, quantity of goods returned and reason for the return;
- (b) All Product returns must be shipped FREIGHT PREPAID to MERCK CANADA as per the "Return for Credit – Instructions" at Section 16.2;
- (c) Only credit note(s) will be issued for returned Product(s);
- (d) No credit will exist until a credit note is issued by MERCK CANADA in a subsequent Purchaser statement and no deduction, set-off or adjustment to any invoice may be made by Purchaser except on the basis of such credit note;
- (e) Purchaser is responsible for returning the Products in the same condition as they were received and in full compliance with all applicable laws;
- (f) Purchaser retains title to and responsibility for the Products until received by MERCK CANADA;
- (g) If Products are returned collect, and MERCK CANADA, in its sole discretion, accepts delivery thereof, then an amount (plus applicable taxes) will be deducted from the credit note;
- (h) Returned Products will not be returned to the Purchaser and MERCK CANADA shall destroy any such returned Products even if no credit is issued for such Products;
- (i) No credit will be issued unless the value of the Product being returned exceeds \$25;
- (j) Credit for partial bottles and packages of Products, other than those Products set out in Section 16.1.3(e) which are not eligible for return for credit, will be calculated, where eligible, as follows:

- (i) part bottles/ packages must be at least ¼ full; eligible amount for reimbursement will be 95% of the original purchase price (or of the most recent published price for discontinued products);
- (ii) credit for returns without an invoice or invoice number will be credited at 95% of the lowest available price during the current and previous year; and

(iii) credit will be prorated as follows:

- 0 -24% part bottle/package – NO CREDIT
- 25 to 49% part bottle/package – 25% of eligible amount
- 50 to 74% part bottle/package – 50% of eligible amount
- 75 to 99% part bottle/package – 75% of eligible amount
- Full bottle/package – 100% of eligible amount

(k) Credit will be issued for intact single strips. Credit for Hepalean and Hepalean-Lok will be given for full boxes only;

(l) There will be NO credit issued for Zemuron 10mg injection; and

(m) **Narcotic and controlled drugs:** May be returned only after obtaining a written authorization from MERCK CANADA.

16.2 Return For Credit – Instructions

(a) If Products are eligible for return under these T&Cs, then Purchaser should:

(i) package and return the Product, transport prepaid to MERCK CANADA at the following address:

Merck Canada Inc
Returned Goods Processing
4071 North Service Road
Burlington, Ontario
L7L 4X6

(ii) include a copy of the original MERCK CANADA invoice or, at a minimum, the packing slip, with the Product return.

(b) MERCK CANADA representatives are not permitted to pick up returned merchandise from the Purchaser.

17. RETURN POLICY FOR DISPOSAL – INSTRUCTIONS

Where Product is ineligible for return for credit, or where Product has not been purchased directly from MERCK CANADA, such Product will be accepted by MERCK CANADA for **disposal only**, subject to the Product being returned, transportation charges prepaid to the following MERCK CANADA facility with a clearly indicated label indicating "FOR DESTRUCTION ONLY (In accordance with the above stated policy, credit will not be given for these products):

MERCK CANADA
FOR DESTRUCTION ONLY
4071 North Service Road
Burlington, Ontario
L7L 4X6

18. USE, STORAGE AND TRANSPORTATION

All Products must be used, stored and transported in accordance with the specific conditions contained in the respective Product monograph; Purchaser being responsible for ensuring that it has the proper facilities in place for the storage, handling and distribution of all Products ordered.

19. TRANSFER INSTRUCTIONS FOR VACCINES AND OTHER TEMPERATURE SENSITIVE PRODUCTS

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 Product monograph.

20. NO EXPORT OR TRANS-SHIPING FOR EXPORT

Products purchased from MERCK CANADA may only be sold in Canada 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 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 out of Canada. In addition to all other rights and remedies available to Merck Canada Inc, MERCK CANADA may, in its sole discretion, limit or refuse to make further sales to a Purchaser (and its affiliates) which fails to comply with this policy.

21. BREACH OF T&CS

Any breach of these T&Cs by a Purchaser may result in MERCK CANADA refusing all further sales, or revoking its approval of sales by MERCK CANADA authorized distributors, of MERCK CANADA Products to such Purchaser in addition to any other rights or remedies available to MERCK CANADA. Should MERCK CANADA have reason to believe that a Purchaser is in breach of these T&Cs, pending completion of any investigations it chooses to carry out, MERCK CANADA reserves the right, in its sole discretion, to suspend or refuse further sales to such Purchaser, or if that Purchaser is supplied by MERCK CANADA authorized distributors, to suspend or refuse its approval of sales by such MERCK CANADA authorized distributors.

22. 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. 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.

23. CONTRACT MODIFICATION

Under no circumstances shall the Purchaser unilaterally impose any terms, conditions, prices or extra charges upon MERCK CANADA without its prior written consent and authorization.

24. LIMITATION AND DAMAGES

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, 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.

25. CHANGES TO T&Cs

These T&Cs are subject to change, from time to time, at MERCK CANADA's 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.

26. GOVERNING LAW AND PRECEDENCE

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.

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 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, order, proposal or other document issued by any 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.