

**STANDARD TERMS AND CONDITIONS OF SALE - PHARMACEUTICAL AND VACCINE  
PRODUCTS DISTRIBUTED BY MERCK SHARP & DOHME CORP.  
Effective August 1, 2020**

These Standard Terms and Conditions of Sale have been updated to reflect the following changes:

- Updated Section 10, CORRESPONDENCE – Updated the National Service Center address.

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These Terms and Conditions may be updated at any time. The current version may be accessed at:  
[www.merck.com/termsandconditions](http://www.merck.com/termsandconditions), [www.merckorders.com](http://www.merckorders.com), or [www.merckvaccines.com](http://www.merckvaccines.com).

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These Standard Terms and Conditions of Sale govern all direct purchases and all returns of prescription pharmaceutical and vaccine products that are sold by Merck Sharp & Dohme Corp., a subsidiary of **Merck & Co., Inc.**, for itself and on behalf of its subsidiaries and/or affiliates, including Cubist Pharmaceuticals LLC and Organon USA, Inc. (collectively, “Manufacturer”). Manufacturer has the unilateral right to modify these Standard Terms and Conditions of Sale at any time at its sole discretion.

**1. DEFINITIONS**

- A. **“Client of Direct Purchasing Customer”** means a licensed purchaser of Product from a Distributor.
- B. **“Depot Customer”** means a division, subsidiary, parent, affiliate, or related company under the common ownership and control of a Government Customer, Depot Vaccine Purchasing Customer, Health Care Provider Vaccine Purchasing Customer, or Retail Pharmacy Vaccine Purchasing Customer and such Depot Customer meets the requirements of a Government Customer, Depot Vaccine Purchasing Customer, Health Care Provider Purchasing Customer or Retail Pharmacy Vaccine Purchasing Customer as described in these Standard Terms and Conditions of Sale. These Terms and Conditions of Sale applicable to Government Customers, Depot Vaccine Purchasing Customers, Health Care Provider Vaccine Purchasing Customers and Retail Pharmacy Vaccine Purchasing Customers shall also apply to Depot Customers and such customers shall comply with these Standard Terms and Conditions of Sale, including but not limited to, The Storage and Handling Instructions for Transport of Refrigerated Vaccine Product from Depot Locations to Depot Customers in Section 21. A Depot Customer is not permitted to sell Product except to patients for administration of the Product at the Depot Customer facility.
- C. **“Depot Location”** means a facility that is under the control of a Government Customer, Depot Vaccine Purchasing Customer, Health Care Provider Vaccine Purchasing Customer or Retail Pharmacy Vaccine Purchasing Customer and stores Refrigerated Vaccine Product for distribution to a Depot Customer in accordance with the Storage and Handling Instructions for Transport of Refrigerated Vaccine Product from Depot Locations to Depot Customers in Section 21 of these Standard Terms and Conditions of Sale. A Depot Customer is not permitted to sell Product except to patients for administration of the Product at the Depot Customer facility.
- D. **“Depot Vaccine Purchasing Customer”** means a physician or physician group that owns or is employed by outpatient healthcare facilities or clinics, and that operates a Depot Location pursuant to a pharmacy license, as may be required by state law, for its outpatient use in order to depot Refrigerated Vaccines for distribution to Depot Customers in accordance with these Standard Terms and Conditions of Sale. A Depot Vaccine Purchasing Customer is eligible to purchase Refrigerated Vaccine Product directly from the Manufacturer or through a Merck Authorized Distributor for shipment to a Depot Location where such vaccine may be administered to patients or redistributed to Depot Customers. A Depot Vaccine Purchasing Customer, including its Depot Customers, is not permitted to sell Product except to patients for administration of the Product at the Depot Vaccine Purchasing Customer or Depot Customer facility.
- E. **“Distributor”** means a licensed wholesaler or physician distributor that has entered into, and has in effect, a Merck Authorized Distributor Agreement.
- F. **“Drop Shipment”** means any order sent to a Client of a Direct Purchasing Customer not legally or financially owned by the Direct Purchasing Customer, but where the invoice and payment for that particular order remains the responsibility of the Direct Purchasing Customer. Manufacturer determines which Products, if any, are eligible for Drop Shipment by Manufacturer to Client of a Direct Purchasing Customer.

- G. “Government Customer”** means a federal, state, local or tribal government entity. A Government Customer is eligible to purchase Refrigerated Vaccine Product directly from the Manufacturer or through a Merck Authorized Distributor for shipment to a Depot Location where such vaccine may be administered to patients or redistributed to Depot Customers. A Government Customer, including Depot Customer(s), is not permitted to sell Product except to patients for administration of the Product at the Government Customer or Depot Customer facility. Merck has a separate agreement with the Department of Veterans Affairs for Government Customers that are eligible to purchase off of the Federal Supply Schedule Contract (FSS Contract). Additional information about the terms of the FSS Contract may be made available upon request to the Merck National Service (section 10 of this document).
- H. “Health Care Provider Vaccine Purchasing Customer”** means a physician who owns, is employed by, or has contracted with nonpayer outpatient health care facilities; or an advanced practice nurse, nurse midwife, or physician assistant, or a licensed naturopathic physician (ND) who is authorized pursuant to state law to purchase and administer vaccines, either alone or in tandem with a collaborating physician. A Health Care Provider Vaccine Purchasing Customer is eligible to purchase Refrigerated Vaccine Product directly from the Manufacturer or through a Merck Authorized Distributor for shipment to a Depot Location where such vaccine may be administered to patients or redistributed to Depot Customers. A Health Care Provider Vaccine Purchasing Customer, including its Depot Customer(s), is not permitted to sell Product except to patients for administration of the Product at the Health Care Provider Vaccine Purchasing Customer or Depot Customer facility.
- I. “Product”** means a Pharmaceutical Product or Vaccine Product.
- J. “Pharmaceutical Product”** means a prescription pharmaceutical product that Manufacturer sells in the Territory.
- K. “Physician Pharmaceutical Purchasing Customer”** means a physician or physician clinic that is only eligible to purchase PROPECIA<sup>®</sup> (finasteride), INVANZ<sup>®</sup> (ertapenem for injection), PRIMAXIN<sup>®</sup> (imipenem and cilastatin) for Injection, and CANCIDAS<sup>®</sup> (casopfungin acetate) IV.
- L. “Refrigerated Vaccine Product”** means a Vaccine Product stored in refrigerated temperatures of between 2-8°C (36-46°F) per the Manufacturer’s Prescribing Information.
- M. “Retail Pharmacy Vaccine Purchasing Customer”** means a retail pharmacy customer that is only eligible to purchase ZOSTAVAX<sup>®</sup> (Zoster Vaccine Live) directly from Manufacturer. A Retail Pharmacy Vaccine Purchasing Customer is eligible to purchase Refrigerated Vaccine Product through a Merck Authorized Distributor for shipment to a Depot Location where such vaccine may be administered to patients or redistributed to Depot Customers. A Retail Pharmacy Vaccine Purchasing Customer, including its Depot Customer(s), is not permitted to sell Product except to patients for administration of the Product at the Retail Pharmacy Vaccine Purchasing Customer or Depot Customer facility.
- N. “Reverse Distributor”** means a business that collects expired Products from Direct Purchasing Customer or Client of Direct Purchasing Customer and returns them to Manufacturer.
- O. “Territory”** means the 50 states of the United States and the District of Columbia.
- P. “Vaccine Product”** means a vaccine that Manufacturer sells in the Territory.
- Q. “Warehousing Retail Pharmacy Pharmaceutical Purchasing Customer”** means a retail pharmacy chain that has at least one warehouse and serves 50 or more wholly-owned stores.

## 2. CATEGORIES OF DIRECT PURCHASING CUSTOMERS

- A. “Direct Pharmaceutical Purchasing Customers”** means the following categories of customers that are eligible to purchase Pharmaceutical Products, with the exception of KEYTRUDA<sup>®</sup> (pembrolizumab) for Injection and ZINPLAVA<sup>™</sup> (bezlotoxumab) Injection, directly from Manufacturer: Distributors, Warehousing Retail Pharmacy Pharmaceutical Purchasing Customers, Government Customers, and Physician Pharmaceutical Purchasing Customers.
- B. “Direct Vaccine Purchasing Customers”** means the following categories of customers that are eligible to purchase Vaccine Products directly from Manufacturer: Distributors, Government Customers, Health Care Provider Vaccine Purchasing Customers, and Retail Pharmacy Vaccine Purchasing Customers.

- C. **“Direct KEYTRUDA® (pembrolizumab) for Injection Purchasing Customers”** means a Distributor that has been approved by Manufacturer, in its sole discretion, to purchase KEYTRUDA directly from Manufacturer and that has entered into, and has in effect, a Specialty Distribution Agreement for KEYTRUDA.
- D. **“Direct ZINPLAVA™ (bezlotoxumab) Injection Purchasing Customers”** means a Distributor that has been approved by Manufacturer, in its sole discretion, to purchase ZINPLAVA directly from Manufacturer and that has entered into, and has in effect, a Specialty Distribution Agreement for ZINPLAVA.
- E. **“Direct RENFLEXIS™ (infliximab-abda) for Injection Purchasing Customers”** means a Distributor that has been approved by Manufacturer, in its sole discretion, to purchase RENFLEXIS directly from Manufacturer and that has entered into, and has in effect, a Merck Authorized Distributor Agreement for RENFLEXIS.
- F. **“Direct Purchasing Customers”** means Direct Pharmaceutical Purchasing Customers, Direct Vaccine Purchasing Customers, Direct KEYTRUDA® (pembrolizumab) for Injection Purchasing Customers, Direct ZINPLAVA™ (bezlotoxumab) for Injection Purchasing Customers and Direct RENFLEXIS™ (infliximab-abda) for Injection Purchasing Customers, collectively.

### 3. PURCHASING REQUIREMENTS

Customers are encouraged to purchase all Pharmaceutical Products and Vaccine Products directly from Manufacturer or indirectly from a Merck Authorized Distributor. Merck Authorized Distributors are listed at [www.merck.com](http://www.merck.com).

### 4. ORDERS

- A. Manufacturer prefers orders to be placed electronically via Electronic Data Interchange (“EDI”), [www.merckorders.com](http://www.merckorders.com), or [www.merckvaccines.com](http://www.merckvaccines.com). To register for [www.merckorders.com](http://www.merckorders.com) or [www.merckvaccines.com](http://www.merckvaccines.com), click on “I need to Register” and follow the instructions. Only Direct Purchasing Customers with existing accounts may order through EDI or the Internet. Legacy Schering Corp. and Organon USA, Inc. products are not available for order through the Internet.
- B. Direct Purchasing Customers may alternatively place orders with the Merck Order Management Center by telephone, fax, or mail, as set forth in Section 10 of these Standard Terms and Conditions of Sale.
- C. **Obligations of Direct Purchasing Customer (Financial and Credit Position)**
  - i. Direct Purchasing Customer must maintain an adequate financial condition satisfactory to Manufacturer and substantiate such condition with financial statements or as otherwise requested by Manufacturer. If, in Manufacturer's judgment, at any time before shipment of Product, the financial condition of the Direct Purchasing Customer becomes impaired or unsatisfactory to Manufacturer, Manufacturer may hold, deny, or require cash payment or appropriate security before shipment. These remedies shall be in addition to, and not instead of, other remedies available to Manufacturer under these Standard Terms and Conditions of Sale or by law.
  - ii. Direct Purchasing Customers are responsible for paying, in full, all amounts that are applicable to Product purchases by the due date. No deductions, other than cash discount, if any, are permitted unless authorized by a prior credit memo or as otherwise expressly permitted herein. Direct Purchasing Customer shall reimburse Manufacturer for any cash discount taken but not earned. Manufacturer reserves the right to hold orders on accounts with past due balances until such items are resolved to Manufacturer's satisfaction.
- D. **Miscellaneous Account Administration**
  - i. All orders are subject to acceptance by Manufacturer.
  - ii. Manufacturer reserves the right to cancel back orders after 30 days.

- iii. Manufacturer reserves the right to issue a check to Direct Purchasing Customers who do not use open credits on their accounts after 90 days.
- iv. Unless otherwise mutually agreed to by Manufacturer and Purchaser in writing, Manufacturer will determine the time, route, and carrier of all shipments. Orders will be subject to a service fee in an amount determined by Manufacturer when Direct Purchasing Customer requests expedited shipping, including overnight shipping.

#### **E. Order Maximums**

- i. If a Direct Purchasing Customer's order(s), within thirty (30) days for any individual Product, exceeds 110% of the Direct Purchasing Customer's established pattern of previous total monthly purchases for that Product, then Manufacturer reserves the right to reduce, defer, back-order, or decline such order(s).
- ii. To ensure adequate supply of a Product for all customers, Manufacturer reserves the right to reduce, defer, back-order, or decline such orders to a level below 110% of the Direct Purchasing Customer's established pattern of previous total monthly purchases for that Product.

#### **F. Order Minimums**

- i. All orders, including Drop Shipments, must have a minimum value of \$600 per order. This minimum order value is the net effective price of the Product(s) only and does not include additional charges in the order (e.g., shipping charges, taxes, etc.).
- ii. Orders of less than \$600 per order will be subject to a service charge of \$20.
- iii. Back-ordered Products will count toward the minimum order value.
- iv. Orders containing only ANTIVENIN™ (Iatrodectus mactans) are excluded from this minimum.
- v. Manufacturer reserves the right to waive the service fee for specific market events determined by Manufacturer. These occurrences will be announced on [www.merckorders.com](http://www.merckorders.com) or [www.merckvaccines.com](http://www.merckvaccines.com).

### **5. PRICES**

- A. Orders will be invoiced at prices in effect at the time the order is received unless deferred shipment beyond the Merck standard shipping period is requested by the Direct Purchasing Customer. If the Direct Purchasing Customer requests deferred shipment, then the order will be invoiced at the price in effect at the time of shipment. The Merck standard shipping period may vary based on the category of Direct Purchasing Customer and Product purchased. Please contact the Merck Order Management Center at 800-MERCK-RX (800-637-2579) for further information regarding the Merck standard shipping period for your order.
- B. All prices are subject to change without notice. If Manufacturer changes the price of a Product, Manufacturer will not allow price adjustment for inventory on hand or enroute to Direct Purchasing Customer because of a price change.
- C. Manufacturer reserves the right to rebill a Direct Purchasing Customer if it determines the Direct Purchasing Customer was billed an incorrect price due to internal system errors.
- D. Please address all requests for price quotations to the Merck Order Management Center.

### **6. TAXES**

- A. Direct Purchasing Customers are responsible for paying any tax that is applicable to the sale of any Product as of the date of shipment of such Product, except for back-ordered Product. On back-ordered Product, the Direct Purchasing

Customer will be responsible for Federal Excise Taxes that were applicable at the time the Product was ordered and all other taxes that were applicable at the time the Product was shipped.

- B. When product is returned to Manufacturer via PharmaReturns, regardless of whether it is eligible for reimbursement, the Direct Purchasing Customer or Client of the Direct Purchasing Customer will be credited for the Federal Excise Tax paid.

## 7. REMITTANCES

- A. Manufacturer accepts three (3) forms of payment: Electronic, Check, and Credit Card:

- i. Manufacturer prefers Electronic Payment. Arrangements for establishing payment via Electronic Fund Transfer may be made by contacting the Merck Order Management Center at 800-MERCK-RX (800-637-2579).
- ii. Check Payment should be sent to the lock-box address indicated on the invoice. Payment is recognized when received at this lock-box address.
- iii. Manufacturer accepts the following forms of Credit Card Payment: American Express, MasterCard, and VISA. Orders placed by credit card will be charged automatically on the applicable discount due date, less the two percent (2%) prompt payment discount (unless otherwise noted on invoice).

### B. Pharmaceutical Product Payment Terms

- i. Other than electronic payment, a two percent (2%) prompt payment discount is earned on invoice purchases if paid within 30 days from date of invoice; net 31 days (unless otherwise noted on invoice).
- ii. Electronic payment: two percent (2%) prompt payment discount if paid within 35 days from date of invoice, net 36 days (unless otherwise noted on invoice).
- iii. Government Purchasing Customers invoice payment terms are net 30 days.

### C. Vaccine Product Payment Terms

- i. Distributors Vaccine Purchasing Customers
  - a. Other than electronic payment, a two percent (2%) prompt payment discount is earned on invoice purchases if paid within 30 days from date of invoice; net 31 days (unless otherwise noted on invoice).
  - b. Electronic payment: two percent (2%) prompt payment discount if paid within 35 days from date of invoice, net 36 days (unless otherwise noted on invoice).
- ii. Government Vaccine Purchasing Customers
  - a. Federal government entity: invoice payment terms of net 30 days.
  - b. State, local, or tribal government entity: a two percent (2%) prompt payment discount is earned on invoice purchases if paid within 90 days from date of invoice; net 91 days (unless otherwise noted on invoice).
- iii. Health Care Provider Vaccine Purchasing Customers

A two percent (2%) prompt payment discount is earned on invoice purchases if paid within 90 days from date of invoice; net 91 days (unless otherwise noted on invoice).
- iv. Retail Pharmacy Vaccine Purchasing Customers

A two percent (2%) prompt payment discount is earned on invoice purchases if paid within 30 days from date of invoice; net 90 days (unless otherwise noted on invoice).

## **8. CLAIMS FOR LOSS, SHORTAGE, BREAKAGE, LEAKAGE, OR OTHER DAMAGE IN SHIPMENTS**

- A.** Title to merchandise sold will pass to the Direct Purchasing Customer upon delivery to the carrier at the point of shipment. Orders are shipped freight prepaid (unless expedited delivery is requested). However, unless the Direct Purchasing Customer designates the carrier, Manufacturer retains the risk of loss, shortage, breakage, or leakage until the merchandise is delivered to the Direct Purchasing Customer by the carrier.
- B.** Claims for loss, shortage, breakage, leakage, or other damage occurring in transit must be submitted to the Merck Order Management Center at 800-MERCK-RX (800-637-2579) within fifteen (15) days from date of shipment. The sole and exclusive remedy of the Direct Purchasing Customer for loss, shortage, breakage, leakage, or other damage occurring in transit is Manufacturer reimbursement for affected Products, in an amount equal to the original Manufacturer invoice price, and the opportunity to repurchase the affected Products at the original Manufacturer invoice price. Alternatively, Manufacturer may, in its sole discretion, provide replacement Product. Direct Purchasing Customer agrees that no other remedy (including, but not limited to, incidental, consequential, or other damages of any kind) shall be available.
- C.** Loss, shortage, breakage, leakage, or other damage claims must also be accompanied by freight bill with notation by the carrier of the loss, shortage, breakage, or damage, or accompanied by the carrier's concealed loss or damage report where the loss is of a concealed nature. Where loss, shortage, breakage, leakage, or other damage has occurred in transit, Direct Purchasing Customer agrees to cooperate fully with Manufacturer in the Manufacturer's effort to establish a claim against the carrier. Claims submitted by the Direct Purchasing Customer without appropriate documentation will be denied.
- D.** If Product is delivered damaged to the Direct Purchasing Customer, Direct Purchasing Customer should accept the shipment and call the Merck Order Management Center at 800-MERCK-RX (800-637-2579) upon receipt, for instructions. Reimbursement may be delayed if Direct Purchasing Customer does not follow this process by not taking receipt of Damaged Product.
  - i.** For any order placed by the Client of a Direct Purchasing Customer through a Distributor that is delivered damaged, the Client of a Direct Purchasing Customer should contact the Distributor upon delivery for instructions.

## **9. OTHER CLAIMS**

- A.** Direct Purchasing Customers and Clients of Direct Purchasing Customers that receive Product that has not been subject to breakage, leakage, or other damage occurring in transit, but that otherwise appears to be defective ("Defective Product"), should contact the Merck National Service Center at 800-672-6372 immediately. The Merck National Service Center will provide instructions on how to return Defective Product and will arrange for Product replacement. Direct Purchasing Customers and Clients of Direct Purchasing Customers that fail to follow this process (for example, by returning Defective Product with expired Product) shall not be eligible for replacement or reimbursement for the Defective Product. The sole and exclusive remedy of the Direct Purchasing Customer for Defective Product is Product replacement or reimbursement at the original purchase price. Direct Purchasing Customer agrees that no other remedy (including, but not limited to, incidental, consequential, or other damages of any kind) shall be available.
- B.** All claims involving discounts, pricing, credits, returns, or account receivable issues must be received by Merck Order Management Center within one (1) year of the date of shipment for the purchase in question. Unauthorized deductions taken by Direct Purchasing Customer from Direct Purchasing Customer payments, including, but not limited to, those made after this deadline, will be denied. Noncompliance could jeopardize the fulfillment of future orders.

## 10. CORRESPONDENCE

All Direct Purchasing Customer communication relative to <b>order fulfillment</b> should be directed to:	<b>All other</b> correspondence should be directed to:
Merck Order Management Center Mail Stop UG4C-24 351 North Sumneytown Pike North Wales, PA 19454 Phone: 800-MERCK-RX (800-637-2579) Fax: 215-652-6700	Merck National Service Center 3900 Paramount Parkway Morrisville, NC 27560 Phone: 800-NSC-MERCK (800-672-6372) Fax: 215-616-5677

## 11. DROP SHIPMENTS

### A. Pharmaceutical Products

- i. Pharmaceutical Products are generally not available for Drop Shipment.
- ii. If supply is low, Manufacturer may prohibit or restrict routine replenishment orders to Direct Purchasing Customers. If this occurs, Manufacturer may allow Drop Shipments to the Clients of a Direct Purchasing Customer on behalf of the Direct Purchasing Customer, billing the Direct Purchasing Customer at the prices in effect when such Drop Shipments are ordered.
- iii. Manufacturer reserves the right to limit the fulfillment of Drop Shipment orders.
- iv. It is the sole responsibility of the Direct Purchasing Customer to ensure that the Client of the Direct Purchasing Customer is fully licensed to receive Pharmaceutical Products.

### B. Vaccine Products

- i. Vaccine Products are generally not available for Drop Shipment.
- ii. Frozen Vaccine Product may be eligible for Drop Shipment by Manufacturer to Clients of Direct Purchasing Customer, at Manufacturer's election.
- iii. If supply is low, Manufacturer may prohibit or restrict routine replenishment orders to Direct Purchasing Customers. If this occurs, Manufacturer may allow Drop Shipments to the Clients of Direct Purchasing Customer on behalf of the Direct Purchasing Customer, billing the Direct Purchasing Customer at the prices in effect when such Drop Shipments are ordered.
- iv. Manufacturer reserves the right to limit the fulfillment of Drop Shipment orders.
- v. It is the sole responsibility of the Direct Purchasing Customer to ensure that the Client of the Direct Purchasing Customer is fully licensed to receive vaccine products.

## 12. DATED PRODUCTS

All Products carry expiration dates, which may be greater than or less than one year from the date of Product shipment. Products shall not be used after the expiration date printed on the Product label.

## 13. FORMULAE

The formulae shown in the Merck Catalog are those in use at the time of publication. Manufacturer reserves the right to make changes without notice whenever advances in medical science or therapeutic knowledge justify such action. Such changes and those made necessary by revisions of the USP–NF standards make it necessary that customers be cautioned to rely on the label statements appearing on the package rather than the Merck Catalog information.

## 14. LIABILITY

- A. Manufacturer will assume the pharmacist's defense and possible judgment liability that might result against the pharmacist in connection with a lawsuit arising solely out of the dispensing (excluding immunization or



authorized agent. Direct Purchasing Customers or Clients of Direct Purchasing Customers may not destroy Product.

## **B. Qualification for Reimbursement**

- i.** In order to be eligible for Reimbursement, returned Products must be returned in their original containers bearing the original label. The original outer packaging is not required providing the product is in a sealed container.
- ii.** The period for which Manufacturer will accept Products for reimbursement (the “Product Returns Window”) is measured as follows:
  - a. Pharmaceutical Products purchased by Direct Purchasing Customers and Vaccine Products purchased by Distributors are eligible for reimbursement if they are **received** by PharmaReturns, Inc. 180 days before the Product expiration date to 1 year after the Product expiration date.
  - b. Vaccine Products purchased by Government Customers, Health Care Provider Vaccine Purchasing Customers, or Retail Pharmacy Vaccine Purchasing Customers are eligible for reimbursement if they are **received** by PharmaReturns, Inc. on the Product expiration date to 1 year after the Product expiration date.
  - c. Manufacturer recommends returning parties not return Product before the first day of the Product Returns Window and not later than 15 Business Days before the end of the applicable Product Returns Window.
  - d. Product **received** by PharmaReturns, Inc. outside of the applicable Product Returns Window will be accepted for destruction only.
- iii.** The following will **not** be eligible for reimbursement:
  - a. Products labeled, marked, or sold as nonreturnable;
  - b. Products returned in damaged condition (broken vials, broken tablets);
  - c. Opened liquids, vials, granules, ophthalmics, cartridges, and activated injectables, except as provided in Section 16.E.;
  - d. Partially dispensed lotions, ointments, tubes, creams, gels, ampoules, and syringes except as provided in Section 16.E.;
  - e. Products that have been involved in a fire or obtained in a sacrifice or bankruptcy sale;
  - f. Products labeled as samples or free goods or repackaged Products;
  - g. Product that is not in its original container or not bearing its original label. If Product is contained within an outer packaging, the original outer packaging is not required providing the product is in a sealed container;
  - h. Product that Manufacturer determines, in its sole discretion, is otherwise adulterated or misbranded;
  - i. Products returned by other than a Direct Purchasing Customer, Client of a Direct Purchasing Customer, or Reverse Distributor;
  - j. Product illegally imported into the Territory;
  - k. Counterfeit goods and/or diverted product; or
  - l. Product in which the lot number and/or expiration date is missing, illegible, covered, and/or unreadable on original container.

## **C. Returning Party Instructions**

- i.** Return Products are to be sent by the returning party to:

Merck  
c/o PharmaReturns, Inc., Processing Center  
100 Corporate Drive, Suite 2  
Montgomeryville, PA 18936-9644

- ii. All returns must be accompanied by a completed Merck Product Return Form. Failure to provide a completed Merck Product Return Form may result in no reimbursement for returned Product.
  - a. Returns Forms are available at [www.merckorders.com](http://www.merckorders.com), [www.merckvaccines.com](http://www.merckvaccines.com), or by calling the Merck Order Management Center at 800-MERCK-RX (800-637-2579).
  - b. There are different forms for Direct Purchasing Customers, Clients of a Direct Purchasing Customer, and Reverse Distributors (Third Party Returns Processor).
- iii. Shipments spanning multiple containers must have each carton clearly numbered (e.g., 1 of 10, 2 of 10, etc.).
- iv. The returning party will pay transportation charges. Manufacturer will not pay or give credit for transportation, service, handling, or processing fees.
- v. If a Reverse Distributor returns Product for multiple customers (e.g., multiple Direct Purchasing Customers or multiple Clients of Direct Purchasing Customers) in a single container, the returned Product and accompanying Return forms must be segregated by customer, to enable PharmaReturns, Inc. to calculate proper reimbursement to each Direct Purchasing Customer or Client of a Direct Purchasing Customer.

#### **D. Manufacturer Administration of Reimbursement**

- i. Only those Products that conform to the foregoing requirements will be accepted for reimbursement. The credit memorandum, if applicable, will list each Product accepted for return and the amount of reimbursement. Products not accepted for reimbursement will not be returned to the returning party but will be destroyed.
- ii. The basis for determining reimbursement, if applicable, will be the lowest price available to the Direct Purchasing Customer or Client of the Direct Purchasing Customer 24-months before the date that PharmaReturns, Inc. receives the return. An alternative basis for determining the reimbursement price will be the Manufacturer's invoice for the returned Product if furnished by the Direct Purchasing Customer or Client of the Direct Purchasing Customer. Manufacturer reserves the right to adjust or eliminate the amount of reimbursement at Manufacturer's sole discretion.
- iii. For Products in tablet form, reimbursement will be given based on the number of actual tablets returned, not to exceed the number of tablets that were packaged in the original container.
- iv. The form of reimbursement is generally as follows:
  - a. If the returning party is a Direct Purchasing Customer and the returned Products were purchased directly from Manufacturer, then reimbursement for returned Products will be issued in the form of a credit memo on the Manufacturer account, which may be applied against any purchase.
  - b. If the returning party is not a Direct Purchasing Customer or the returned Products were not purchased directly from Manufacturer, then Manufacturer's preferred form of reimbursement will be a credit memo through the returning party's designated Distributor; however, Manufacturer, in its sole discretion, may provide reimbursement via a check to the returning party.
  - c. Manufacturer will not provide reimbursement for Product to a Reverse Distributor, but will instead provide reimbursement to the Direct Purchasing Customer or Client of the Direct Purchasing Customer on behalf of whom the Reverse Distributor returned the Product.
  - d. Manufacturer will not provide information to a Reverse Distributor regarding reimbursement provided to a Direct Purchasing Customer or Client of the Direct Purchasing Customer.

#### **E. Returned Product from North Carolina, Mississippi, or Georgia**

- i. Product purchased by a Direct Purchasing Customer or Client of a Direct Purchasing Customer located in Georgia, Mississippi, or North Carolina shall be subject to the Return Policy set forth elsewhere in these

Standard Terms and Conditions of Sale, except that:

a. Partial package returns of liquids, vials, granules, ophthalmics, cartridges, and activated injectables, dispensed lotions, ointments, tubes, creams, gels, ampoules, and syringes shall be eligible for reimbursement. The basis for reimbursement shall be the percentage of Product returned based on the following best estimate:

1. nearly full or full equates to 100% credit;
2. half and up to three quarters full equates to 75% credit;
3. one-quarter and up to half full equates to 50% credit;
4. less than one-quarter full equates to 20% credit; and
5. almost empty equates to 0% credit.

b. Reimbursement for returned Product will be issued within sixty (60) days from the date that PharmaReturns, Inc. receives the Product and all necessary return documentation. If the returned Product is not eligible for reimbursement, Manufacturer will notify the returning party in writing, within thirty (30) days of the receipt of the return, of Manufacturer's intent not to issue reimbursement.

- ii. In order to be eligible for the returns exceptions detailed in Section 16.E.i, above, Product purchased by a Direct Purchasing Customer or Client of a Direct Purchasing Customer located in North Carolina, Mississippi, or Georgia must be returned in a separate container(s) from any other Product and accompanying Return Forms must be segregated. The container and associated paperwork must clearly be labeled as **“product return from Georgia, Mississippi, or North Carolina.”** If the returning party fails to properly segregate and label returns from Georgia, Mississippi, or North Carolina, then the exceptions detailed in Section 16.E.i shall not apply.

## 17. SUPPLEMENTAL RETURN PROGRAMS

Certain Product that is not eligible for return under the Return Policy in Section 16 may be eligible for return pursuant to one of the following of Manufacturer's supplemental return programs:

- A. Supplemental Return Program for Direct Purchasing Customers (for eligible Vaccine Product) - Further information regarding the Supplemental Return Program is available at [www.merck.com/supplementalreturns](http://www.merck.com/supplementalreturns) or by calling the Merck Vaccine Customer Center at 877-VAX-MERCK (877-829-6372).
- B. Supplemental Return Program for Clients of Direct Purchasing Customers (for eligible Vaccine Product) - Further information regarding the Supplemental Return Program is available at [www.merck.com/supplementalreturnsforclients](http://www.merck.com/supplementalreturnsforclients) or by calling the Merck Vaccine Customer Center at 877-VAX-MERCK (877-829-6372).
- C. Supplemental Return Program for Oncology Products - Further information regarding the Supplemental Return Program for Oncology Products is available by calling C3i Solutions at 800-611-7397.
- D. Supplemental Return Program for NEXPLANON® (etonogestrel implant) - Further information regarding the Supplemental Return Program for NEXPLANON is available by calling C3i Solutions at 800-293-5979.
- E. Abandoned Unit Program for NEXPLANON® (etonogestrel implant) - Further information regarding the Abandoned Unit Program for NEXPLANON is available by calling the applicable dispensing specialty pharmacy, either Caremark, LLC at 855-324-2566 or Accredo Health Group, Inc. at 855-788-4220.
- F. Supplemental Return Program for RENFLEXIS® (infliximab-abda) - Further information regarding the Supplemental Return Program for RENFLEXIS is available by calling C3i Solutions at 800-681-7022.

Manufacturer reserves the right to modify or cancel any of the foregoing supplemental return programs at any time.

## **18. DISASTER RELIEF VACCINE RETURN PROGRAM AND DISASTER RELIEF RETURN PROGRAM FOR ONCOLOGY PRODUCTS**

Certain uninsured Products that spoil due to a FEMA-Declared Major Disaster may be eligible for return pursuant to Manufacturer's Disaster Relief Vaccine Return Program or Manufacturer's Disaster Relief Return Program for Oncology Products. Further information regarding the Disaster Relief Vaccine Return Program is available at [www.merck.com/disaster\\_relief](http://www.merck.com/disaster_relief) or by calling the Merck Vaccine Customer Center at 877-VAX-MERCK (877-829-6372). Further information regarding the Disaster Relief Return Program for Oncology Products is available by calling Telerx at 800-410-2543. Manufacturer reserves the right to modify or cancel the Disaster Relief Vaccine Return Program or Disaster Relief Return Program for Oncology Products at any time.

## **19. PRODUCT RECALLS**

Direct Purchasing Customers agree to fully cooperate in implementing any recall or withdrawal of Product deemed necessary by Manufacturer. Manufacturer will notify Direct Purchasing Customers in the event of a Product recall or withdrawal and will provide instructions on how to assist in returning all affected Product and communicating with Clients of Direct Purchasing Customers regarding the recall or withdrawal. Manufacturer, in its sole discretion, shall determine what, if any, recall services are required and shall make such determination on a recall-by-recall basis. Manufacturer shall compensate Distributors for expenses incurred for recall services directly related to Distributor's inventory of the recalled Product and dissemination of recall information to Clients of Direct Purchasing Customers, to the extent requested by Manufacturer's recall notice. The amount of such compensation shall be determined by Manufacturer, in its sole discretion. Distributors requesting reimbursement for recall activities must submit their request, on the Merck Recall Reimbursement Form, within 60 days after the date on which Merck sends Distributor the Merck Recall Reimbursement Form, but in any event no later than one year after Manufacturer's recall notice. The Merck Recall Reimbursement Form may be obtained by contacting 1-800-MERCKRX.

## **20. STORAGE AND HANDLING**

- A.** Direct Purchasing Customers taking physical possession of Products are fully responsible for complying with all applicable federal, state, and local laws and regulations relating to the storage, handling, and distribution of such Products, including, without limitation, any laws applicable to the distribution of controlled substances. Furthermore, Direct Purchasing Customer represents and warrants that it has and will maintain at all times the proper license or licenses required to receive, handle and store Product, including, but not limited to, licenses that may be required to distribute Refrigerated Vaccine Product from Depot Locations to Depot Customers.
- B.** Direct Purchasing Customers shall take such precautions as are necessary to prevent Product from falling into the hands of those who may not lawfully possess or handle Product, and fully comply with all applicable local, state, and federal laws and regulations.
- C.** Direct Purchasing Customers shall immediately report in writing to Manufacturer any in-transit loss or shortage of Product including controlled substances.
- D.** Direct Purchasing Customers shall report in writing to Manufacturer, subject to applicable federal and state laws and regulations, any administrative, civil, or criminal action by local, state or federal authorities against Direct Purchasing Customers, its officers, or employees, regarding alleged violations of the Controlled Substance Act of 1970, as amended or other comparable legislation, and shall provide Manufacturer with complete information concerning the disposition of such action.
- E.** Direct Purchasing Customers warrant and agree not to stock any counterfeit goods, diverted Product, Product that is illegally imported into the Territory, expired Product, or Product that has been used, opened, repackaged, or otherwise tampered with.
- F.** Eligibility to purchase any Product considered to be a controlled substance shall be limited to those Direct Purchasing Customers that have (i) completed Manufacturer's Controlled Substances Handling and Suspicious Order Monitoring Questionnaire (the "Questionnaire"), including any revised or updated version thereof that

Manufacturer may issue from time to time in its sole discretion, or (ii) submitted such other responsive documentation of Direct Purchasing Customer's controlled substance compliance program that is otherwise acceptable to Manufacturer, in its sole discretion. Notwithstanding anything to the contrary in these Standard Terms and Conditions of Sale, Manufacturer shall have the right to refuse to sell controlled substances to any Direct Purchasing Customer or to place reasonable restrictions on Direct Purchasing Customer's purchases of controlled substances if (i) Manufacturer reasonably determines, in its sole discretion, the Direct Purchasing Customer has provided an incomplete, inaccurate, deficient, or otherwise unsatisfactory response or information in the Questionnaire or other related documentation, or (ii) Manufacturer reasonably determines, in its sole discretion, that the Direct Purchasing Customer is handling, storing, or distributing controlled substances in a manner that is not compliant with applicable law or that otherwise creates the appearance of non-compliance, until such time as Manufacturer is able to investigate the matter and make a final determination, or (iii) Manufacturer reasonably determines, in its sole discretion, that Direct Customer is not compliant with any applicable EDI requirements in Direct Customer's Merck Authorized Distributor Agreement, irrespective of any grace periods that may have been extended to Direct Customer, in Merck's sole discretion.

## **21. STORAGE AND HANDLING INSTRUCTIONS FOR TRANSPORT OF REFRIGERATED VACCINE PRODUCT FROM DEPOT LOCATIONS TO DEPOT CUSTOMERS**

These instructions apply to the storage and distribution of Refrigerated Vaccine Product from Depot Locations to Depot Customers only. These storage and handling instructions do not apply to **BCG VACCINE (TICE® strain)**. Please contact the Merck National Service Center at 1-800-672-6372, Monday through Friday from 8 a.m. to 7 p.m., ET for information regarding this product.

- A.** If it is necessary to transport Refrigerated Vaccine Product to a Depot Location, it is critical to maintain a temperature range of 2-8°C (36-46°F) while in storage and in transit to Depot Customers.
- B.** If the Refrigerated Vaccine Product must be transported, consider inclusion of a temperature recording device to monitor that an appropriate temperature of 2-8°C (36-46°F) is maintained. If used, the temperature monitor/indicator should be placed next to the vaccine and should not come in contact with gelpacks.
- C.** Do not place Refrigerated Vaccine Product in an area where the temperature cannot be regulated, for example, inside the trunk of the vehicle or left unattended inside a vehicle. Avoid placing the container in direct sunlight, or directly in line with any heating or cooling source. Staff should be instructed to deliver the vaccine directly to the appropriate personnel as soon as possible for proper storage as described in the Manufacturer's Prescribing Information.
- D.** If you have any questions about a Merck product or these instructions, please call the Merck National Service Center at 1-800-672-6372, Monday through Friday from 8 a.m. to 7 p.m., ET.

## **22. CHARGEBACK POLICY FOR DISTRIBUTORS**

Policies and procedures specific to chargebacks are set forth in Appendix A as part of these Standard Terms and Conditions and are available on request.

## **23. FORCE MAJEURE**

Neither Manufacturer nor Direct Purchasing Customer shall be liable for delay or failure of performance occasioned by causes beyond its control, including, but not limited to, acts of God or the public enemy, civil unrest, riots, acts of terrorism, declared or undeclared wars, fires, floods, unusually severe weather, earthquakes, or volcanoes ("Force Majeure Event"). If either party is affected by a Force Majeure Event, the affected party shall give the other written notice, which shall cause, without penalty to either party, all obligations under these Standard Terms and Conditions of Sale to be immediately suspended for a period of sixty (60) days.

## **24. COMPLIANCE WITH LAW**

Direct Purchasing Customers and Clients of a Direct Purchasing Customer shall comply with all federal, state, local, and

other applicable laws and regulations including, but not limited to, the provisions at 42 C.F.R. § 1001.952(h)(1) relating to the reporting of discounts. Direct Purchasing Customers and Clients of a Direct Purchasing Customers agree, to the extent required under applicable federal or state laws, to accurately report to private and governmental third-party payors and others the net effective price, and any other information that must be disclosed under applicable law, for each Product purchased.

## **25. AGREEMENT, ORDER OF PRECEDENCE, AND MODIFICATION**

An order of Product from Manufacturer by a Direct Purchasing Customer signifies Direct Purchasing Customer's agreement to be bound by these Standard Terms and Conditions of Sale. The terms herein take precedence over any conflicting or inconsistent terms contained in any other quotation, purchase order, acknowledgement, invoice, or other document issued by anyone other than Manufacturer except as otherwise provided expressly herein. Any terms or conditions proposed by any party other than Manufacturer that are inconsistent with, or in addition to, these Standard Terms and Conditions of Sale shall be void and of no effect unless Manufacturer agrees to such terms and conditions in writing signed by Manufacturer. No additional terms are implied by usage of trade, by course of dealing, or by course of performance. Notwithstanding anything to the contrary in this Section, Manufacturer has the unilateral right to modify these Standard Terms and Conditions of Sale at any time at its sole discretion.

## **26. SEVERABILITY**

If any provision or clause of these Standard Terms and Conditions of Sale conflicts with the governing law or if any court of competent jurisdiction holds invalid any provision or clause of the Standard Terms and Conditions of Sale, then such provision shall be deemed modified to reflect as nearly as possible the parties' intent. The remainder of the Standard Terms and Conditions of Sale shall remain in full force and effect.

## **27. GOVERNING LAW AND JURISDICTION**

The law of the Commonwealth of Pennsylvania, exclusive of its choice of law rules and the Convention for the International Sale of Goods (if otherwise applicable), shall govern these Standard Terms and Conditions of Sale. Direct Purchasing Customer (or Client of a Direct Purchasing Customer) agrees to submit to the jurisdiction of any competent federal or state court sitting in Pennsylvania.