

PURCHASE ORDER (PO) TERMS and CONDITIONS

This document sets out the terms and conditions of trade (**Conditions**) between **Schering-Plough Animal Health Limited trading as MSD Animal Health (NZCN 7232) (MSD)** and any person or corporation supplying Goods and/or Services to MSD.

1. In these Conditions:
 - (a) **"Blanket Order"** means an Order that provides for the supply of Goods and/or services up to a maximum amount specified by MSD and under which MSD may place individual Orders as and when required.
 - (b) **"Confidential Information"** means all information in whatever form relating to the business or the affairs of MSD which is provided by MSD to the Supplier or which otherwise becomes known to the Supplier in connection with an Order, including (without limitation) information relating to MSD's business operations, technology, finances, products and any information of a third party in MSD's possession.
 - (c) **"Delivery Address"** means the ship to address specified in an Order or otherwise notified to Supplier by MSD.
 - (d) **"Goods"** means the goods described in an Order in the quantity(ies) specified in an Order.
 - (e) **"Intellectual Property Rights"** means all copyright, inventions (including patent), plant varieties, registered and unregistered trade marks (including service marks), registered and unregistered designs, pdfs, films and plates, confidential information (including trade secrets and know how), circuit layouts and other rights resulting from any intellectual activity in the industrial, scientific, literary or artistic fields.
 - (f) **"MSD"** means **Schering-Plough Animal Health Limited (NZCN 7232)** and any related body corporate (within the meaning of the *Companies Act 1993*).
 - (g) **"Order"** means an order by MSD for the supply of Goods and/or Services from the Supplier by a document, of which these Conditions form part, or otherwise notified by MSD to Supplier.
 - (h) **"Order Number"** means the number assigned to the Order by MSD and shown in the Order.
 - (i) **"Price"** means (unless otherwise specified in the Order) the total price of Goods and/or Services specified in an Order in New Zealand dollars, inclusive of packaging, packing, handling, freight, goods and services tax (**GST**), insurance, delivery of the Goods to the Delivery Address and all other duties, levies and charges.
 - (j) **"Supplier"** means the seller of the Goods or Supplier of the Services specified in an Order.
 - (k) **"Services"** means the services described in an Order.
 - (l) **"Tax Invoice"** has the meaning given in the *Goods and Services Tax Act 1985*.
2. Unless an Order provides otherwise:
 - (a) the Order and the sale and delivery of Goods and/or Services thereunder shall be governed by these Conditions.
 - (b) MSD shall pay the Supplier the Price within ninety (90) days from receipt of the Supplier's invoice, subject to Condition 2(c) below.
 - (c) MSD is not obliged to pay the Supplier for any part of the Goods and/or Services until the Supplier has:
 - (i) given MSD a correctly rendered Tax Invoice; and
 - (ii) delivered to MSD any Goods and/or Services due to be delivered.
 - (d) the Order Number must be clearly marked on all documents and invoices relating to the Order; and
 - (e) discounts must be shown on the face of the Supplier's invoice.
3.
 - (a) Supplier warrants that:
 - (i) all Goods supplied to MSD pursuant to these Conditions are new and in an unused condition;
 - (ii) the Goods are of merchantable quality for the purposes of the *Sale of Goods Act 1908*;
 - (iii) the Goods are safe and durable;
 - (iv) the Goods are fit for the purpose for which goods of the same kind are commonly supplied and/or for any other purpose made known by MSD to the Supplier;
 - (v) the Goods are free from all defects in design, materials and workmanship;
 - (vi) where the Goods and/or Services are sold by reference to a specification, drawing, description or sample, they will conform to such specification, drawing, description or sample. Any inspection by MSD will not affect this requirement;
 - (vii) the Goods and/or Services will comply with all relevant industry standards, applicable laws, rules and regulations including those concerning safety, quality, manufacture, packaging, packing, and delivery;
 - (viii) the use by and/or sale of the Goods and/or the output/product resulting from the Services by MSD does not infringe Intellectual Property Rights of any third party and MSD shall not be liable for any claim in that regard or for payment of any loss, damages, royalty licence, or other monies in respect thereof;
 - (ix) it has a good and unencumbered title to the Goods and the Goods will be free from all liens and encumbrances;
 - (x) it will use all due skill, care and diligence when providing the Services;
 - (xi) it will perform the Services within a reasonable time, if the time for performance is not otherwise specified in the Order or notified by MSD to the Supplier;
 - (xii) it will carry out the Services in accordance with any requirements specified by MSD in the Order or otherwise notified by MSD and Supplier; and
 - (xiii) it will notify MSD immediately if it becomes aware of any actual or potential breach of warranty set out in these Conditions.
 - (b) Supplier transfers to MSD (at no cost to MSD) the benefit of any applicable manufacturers' warranty or guarantee received by Supplier.
4. Supplier shall deliver the Goods to the Delivery Address by any delivery date specified by MSD in the Order or otherwise notified by MSD to Supplier.
5. All Goods and/or Services shall satisfy MSD's quality control tests and inspection. Any Goods and/or Services which do not satisfy such tests and inspection and/or are found to breach the warranties in Condition 3 shall entitle MSD, without prejudice to its other rights, to:
 - (a) reject the Goods and/or Services and be released from all obligation to pay for them and Supplier shall collect the Goods within seven (7) days after notification of rejection by MSD (**Collection Period**). If Supplier fails to collect the Goods within the Collection Period, MSD may deliver the Goods to Supplier at Supplier's risk and cost; and
 - (b) purchase like or similar replacement Goods or require the Supplier to re-perform or re-provide the Services and all additional and reasonable costs and expense incurred shall be payable by Supplier to MSD forthwith on demand.
6. Title to, and risk in, the Goods shall not pass to MSD unless and until it has been established that the Goods satisfy MSD's quality control tests and inspection pursuant to Condition 5. Signed delivery dockets shall not mean acceptance by MSD of Goods delivered, or any terms and conditions included in such delivery dockets, but only of the number of packages or cartons delivered.
7. If the full quantity of Goods are not delivered or all or part of the Services are not provided in accordance with the requirements specified in an Order or otherwise notified by MSD to Supplier MSD shall be entitled without prejudice to its other rights to:
 - (a) cancel the Order in whole or in part; and
 - (b) purchase like or similar replacement Goods and/or Services from another party.
8. In the event that MSD exercises its right under clause 7(a) then the Supplier must, in addition to any other liability, pay the costs of removing any Goods which are the subject of that Order from MSD's Delivery Address.
9. Supplier shall be entitled to assign or sublet in whole or in part any of its rights, interest or obligations under an Order without approval from the other party which will not be unreasonably withheld.
10. MSD shall be entitled to direct Supplier to suspend, or Supplier may suspend, shipment or performance of the Order where circumstances beyond either party's control render the same desirable or necessary action without being liable for any costs or damages of the other party, provided the suspending party provides prior written notice of the suspension to the other party as soon as reasonably practical.
11. In relation to Blanket Orders:
 - (a) the issue of a Blanket Order by MSD does not in any way oblige MSD:
 - (i) to place Orders totalling the maximum amount specified in the Blanket Order; or
 - (ii) to place any Order(s) under that Blanket Order.
 - (b) MSD has no obligation to cancel a Blanket Order if it intends not to place any Order (or any further Orders) under that Blanket Order.
 - (c) a Blanket Order may specify that it is a Blanket Order or otherwise be notified by MSD to Supplier as such.

12. The Supplier acknowledges that it is critical to MSD which operates in the area of human health and animal health products to have reliable supplies of Goods and Services and the Supplier indemnifies and agrees to keep indemnified MSD from and against all liability, costs and expenses (including consequential loss) suffered as a consequence of or arising out of or in any way incidental to breach of a warranty (Condition 3), rejection (Condition 5) or cancellation (Condition 7).
13. These Conditions alone constitute the entire agreement between MSD and Supplier and no agreement, term, condition, arrangement, understanding, warranty or promise shall supersede these Conditions. However, if MSD and the Supplier execute a formal agreement in relation to the supply of Goods and/or Services the terms of such formal agreement shall, in the event of inconsistency, prevail over these Conditions.
14. An Order and these Conditions may only be varied with the prior written consent of both parties.
15. GST
 - (a) In this clause "GST" means goods and services tax under the *Goods and Services Tax Act 1985* and regulations thereunder as in force from time to time (**GST Law**) and terms used have meanings as defined in the GST Law.
 - (b) The amount payable for any taxable supply made under or in accordance with this agreement is increased by the amount of any GST levied or imposed on or in respect of such supply provided that it is a precondition of any payment for any taxable supply that the recipient has issued a GST tax invoice or such other document as may be required under the GST Law to enable the payer to obtain an input tax credit.
16. These Conditions shall be governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.
17. The Supplier must not, without MSD's prior written consent, in any manner advertise or publish the fact that the Supplier is a Supplier of Goods and/or Services to MSD.
18. By accepting an Order and/or by delivering Goods or supplying Services pursuant to an Order, Supplier accepts these Conditions as the sole basis of the sale of the Goods and/or supply of the Services and these Conditions shall supersede any conditions of sale appearing on any document of the Supplier (subject to Condition 13). Modification of these Conditions expressed in any document of the Supplier does not apply to an Order unless expressly accepted in writing by MSD.
19. Supplier must effect and maintain:
 - (a) Statutory workers compensation insurance;
 - (b) Public liability insurance;
 - (c) Professional indemnity insurance; and
 - (d) Product liability insurance,
 to cover any and all costs and expenses of whatsoever kind or nature which MSD may suffer or incur as a result of or in connection with any claim, demand, action or proceeding brought by any party including any officer, employee or sub-contractor of the Supplier in relation to the Goods and/or Services.
20. MSD will own all Intellectual Property Rights in all material created by the Supplier in performing the Services. To facilitate this the Supplier:
 - (a) assigns to MSD all future Intellectual Property Rights in all such material (whether the material is created alone or jointly with MSD); and
 - (b) acknowledges that no additional documentation is necessary to complete the assignment and that by virtue of this clause all such future Intellectual Property Rights will vest in MSD.
21. To the extent that the Services contain existing Intellectual Property Rights, the Supplier hereby grants, and will take reasonable steps to ensure that relevant third parties grant, to MSD an irrevocable, royalty-free, perpetual licence to copy, use and modify same for any purpose required by MSD.
22. In relation to Confidential Information, the parties agree:
 - (a) to keep the Confidential Information strictly confidential and secret and prevent disclosure to third persons;
 - (b) to use and reproduce the Confidential Information only as strictly necessary for the purposes of supplying Goods and/or Services pursuant to an Order;
 - (c) to keep the Confidential Information secure and protect it from unauthorised use and disclosure;
 - (d) once Goods and/or Services have been supplied, or upon request by the other party, to return or destroy (at the other party's direction) all Confidential Information in material form.
23. Information will not be considered to be Confidential Information if a party can prove:
 - (a) it has been, or is, published otherwise than through the fault of that party ;
 - (b) it is independently developed by that party; or
 - (c) it is lawfully obtained by that party from a third party not under a duty of confidence.
24. **Ethical Business Practices**
 - (a) In performing its obligations hereunder, the parties mutually acknowledge that their respective corporate policies require that their business is to be conducted within the letter and spirit of the law.
 - (b) Supplier agrees to perform their obligations under each Order in a manner which is consistent with both law and good business ethics. Specifically, each warrants that it shall not make any payment either directly or indirectly of money or other assets including but not limited to the compensation it derives from an Order to any party where such payment would constitute a violation of any law. In addition, regardless of legality, Supplier shall make no payment either directly or indirectly to any officials, officers, agents or representatives of any government or political party if such payment is for the purpose of influencing decisions or actions with respect to the subject matter of an Order or any other aspect of MSD's business.
 - (c) Supplier acknowledges that no employee of MSD shall have authority to give any direction, either written or oral, relating to the making of any commitment by Supplier or its agents to any third party in violation of the terms of this or any other clause of these Conditions.
 - (d) Supplier's failure to abide by the provisions of this clause shall be deemed a material breach of these Conditions. MSD may, in such case, terminate any Order(s) at its sole discretion upon written notice to Supplier and without prejudice to any other remedies that may be available to MSD.
25. **Business Partner Code of Conduct**
 - (a) MSD endeavours to hold itself and its Supplier to the highest ethical and compliance standards, including basic human rights, encouraging fair and equal treatment for all persons, the provision of safe and healthy working conditions, respect for the environment, the adoption of appropriate management systems and the conduct of business in an ethical manner. Without limiting any of Supplier's other obligations hereunder, and without conflicting with or limiting any of the warranties, obligations or other provisions expressly set forth elsewhere in this Agreement, including without limitation its obligations hereof, Supplier agrees that it will abide by the letter and spirit of MSD's Business Partner Code of Conduct (the "Code"), as in effect from time to time, a copy of which is available at <https://www.msd.com/company-overview/culture-and-values/code-of-conduct/>. Supplier agrees that it will provide all documentation reasonably requested by MSD to demonstrate compliance with the Code. In the event of a conflict between the obligations in this Condition 25 and the Code, on the one hand, and any other provision in this Purchase Order, on the other hand, such other provision of this Purchase Order shall control (but only to the extent of the conflict).
 - (b) MSD reserves the right, in its sole discretion, to audit Supplier's operations, books and records to ensure compliance with the Code. MSD will provide reasonable advance notice of such an audit, and may conduct this audit on its own or using a third-party auditor of its choosing. Supplier shall acknowledge receipt of MSD's notice as promptly as practicable after receipt of such notice and will confirm the date on which the audit will occur within 14 days after receipt of such notice. MSD or its third-party auditor may interview Supplier's employees as part of or in connection with the audit. This audit right shall be in addition to any other audit rights granted in this Agreement.
 - (c) In the event an audit identifies a non-conformance by Supplier with the Code, Supplier will promptly take corrective action to remedy the non-conformance. MSD reserves the right to approve all corrective actions. Corrective actions shall be implemented by Supplier at Supplier's expense. MSD will endeavour, whenever practicable, to work with Supplier to remedy the issue and put in place a corrective action plan.
 - (d) In the event Supplier refuses to allow an audit, or fails or refuses to take corrective action, then in addition to any other remedy available to it under this Agreement, at law or in equity, MSD reserves the right to terminate this Agreement in the event Supplier fails to cure such refusal or failure within 90 days after written notice from MSD.
26. **Supplier Expectation**
 - (a) Without limiting any of Supplier's other obligations hereunder and without limiting any of the express warranties or obligations agreed to elsewhere in this Agreement, including without limitation its obligations hereof, MSD expects that Supplier will abide by the letter and spirit of MSD's Supplier Performance Expectations, as in effect from time to time, a copy of which is available at <https://www.msd.com/company-overview/culture-and-values/code-of-conduct/>.
 - (b) In the event of a conflict between the obligations in this Condition 26 and MSD's Supplier Performance Expectations, on the one hand, and any other provision in this Agreement, on the other hand, such other provision of this Agreement shall control (but only to the extent of the conflict).
27. **Data Integrity**
 - (a) Any documentation or data relevant to activities performed, including without limitation any GMP documentation, must be attributable, original, accurate, legible, complete, controlled, retrievable, and safe from intentional or unintentional manipulation or loss. These items are required throughout the retention period of such data / documentation.