

**Merck Sharp & Dohme s.r.o. (the "Seller")**

**GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY TO DISTRIBUTORS**

**1. APPLICABILITY**

Unless explicitly agreed otherwise in writing, these General Terms and Conditions of Sale and Delivery (the "**Terms and Conditions**") are applicable as from 1 July 2014 to all verbal and written quotes and agreements and deliveries by the Seller and replace any other mutual agreements so far concluded between the parties. The Buyer hereby explicitly agrees with these Terms and Conditions. The Seller explicitly rejects the applicability of any general terms and conditions of purchase of the recipient or the customer or the buyer (the "**Buyer**"), which the Buyer accepts. The Seller hereby reserves its right to unilaterally change these Terms and Conditions at any time. These changes shall be effective as of date announced by the Seller to the Buyer. These Terms and Conditions form an integral part of any [agreement] concluded with the Buyer.

**2. AGREEMENTS**

All price lists, quotes and offers made or issued by the Seller in connection with the delivery of finished goods (in particular pharmaceuticals), active pharmaceutical ingredients and/or services, in any form whatsoever, are free of obligation and do not constitute an offer by the Seller. An order placed is considered an irrevocable offer by the Buyer. The Seller is not bound until the commencement of the filling of an order, unless filling is or was subject to a reservation.

**3. PRICES**

- 3.1 Unless explicitly agreed otherwise, the prices applied by the Seller on the delivery date, which prices the Seller has published or otherwise communicated, apply to all agreements. These prices are net and exclusive of VAT. The Seller may change these prices at any time. In addition, the Seller may reduce these prices by a discount yet to be determined or agreed.
- 3.2 The Seller is authorised to levy a surcharge for administrative and shipping costs for orders with an invoice value of less than CZK 1000. The amount of surcharge shall be specified in the Seller's applicable price list.

**4. DELIVERY**

- 4.1 The Seller is responsible for the proper shipment of the goods ordered by the Buyer. Unless explicitly agreed otherwise, the Seller will bear the costs of shipment. Delivery of the ordered goods will be delivered at the delivery address indicated by the Buyer, in accordance with the provisions for this method of delivery in the INCOTERMS 2010, unless agreed otherwise in writing.
- 4.2 The risk of damage, reduction of value, deterioration and loss of the goods passes to the Buyer upon delivery.
- 4.3 The delivery dates given by the Seller are always on approximation and are non-binding. Any failure to meet a delivery date by the Seller does not mean that the Seller is in default as referred to in Section 1975 of the Act No. 89/2012 Coll., Civil Code, as amended.
- 4.4 If the goods to be delivered are not collected by the Buyer or if the Buyer does not take receipt for the goods, they will be stored by the Seller at the expense and risk of the Buyer, possibly, at the Seller's discretion, with a third party.

**5. PAYMENTS**

- 5.1 Payment of the purchase price for delivered goods becomes due immediately following delivery. Payment must be made without any discount or offset before or on the due date stated on the invoice or absent such due date, within 75 days after the invoice date, unless agreed otherwise in

writing.

- 5.2 Absent payment in a timely fashion, the Buyer will be in default by operation of law without any prior notice of default being required. From the moment the Buyer is in default, it will owe statutory interest on the outstanding amount. All extrajudicial costs incurred by the Seller in connection with the collection of sums owed to the Seller (including the costs of legal assistance) will be borne by the defaulting Buyer. The compensation for these extrajudicial costs is at least 15% of the amount owed, unless the actual costs are higher.
- 5.3 The provisions above with regard to the payment term notwithstanding, the Seller is at all times authorised to require advance payment or down payment or to require security from the Buyer for payment before the Seller effects delivery. If the required advance or down payment is not affected and/or the security required is not provided to the Seller's satisfaction, the Seller will be authorised to suspend or refuse delivery.
- 5.4 If the Buyer disputes an invoice from the Seller, the Buyer must send a written, substantiated objection to the Seller within ten days after the invoice date. The challenge of an invoice by the Buyer does not suspend its obligation to pay.

## **6. RETENTION OF TITLE**

- 6.1 The title to the product purchased does not pass to the Buyer until it has complied with all its obligations vis-à-vis the Seller to pay the purchase price for goods delivered or yet to be delivered, services provided or yet to be provided and the related interest, charges and damages due. The Buyer is, however, authorised to dispose of the goods in the course of its ordinary business operations. However, the Buyer is not authorised to pledge the goods or create any other right thereon. The Buyer is required to immediately inform the Seller if third parties assert rights with regard to goods that are still the property of the Seller.
- 6.2 In the cases referred to in Article 7.1 below, the Seller is irrevocably authorised, without any notice of default being required, to remove or procure the removal of goods that are still its property. The Seller is authorised either to retain the goods until the purchase sum (including interest, charges and damages) has been paid in full or to sell the goods to third parties, in which event the net profit will be deducted from the total amount owed by the Buyer.
- 6.3 The Buyer is required to store the goods delivered by the Seller in such a way that these goods can at all times clearly be identified as having been delivered by the Seller. If the Buyer rents a location for the storage of the goods delivered, the Buyer will inform the Seller of the identity and domicile of the lessor upon the Seller's first request.

## **7. NON - PERFORMANCE**

- 7.1 If either of the parties fails to perform its obligations, and in the event of an application for bankruptcy, actual bankruptcy, liquidation of the company or if either of the parties has applied for or been granted suspension of payment, the other party will be authorised to terminate any agreement between the parties in full or in part unilaterally, with no notice of default being required and without being required to pay any damages and without prejudice to all further rights that party may have.
- 7.2 If one of the cases referred to in Article 7.1 occurs in respect of the Buyer, all the Seller's receivables will be immediately due and payable in full. In that event, the Seller will be authorised to suspend or terminate all other agreements with the Buyer for the delivery of goods and services.

## **8. FORCE MAJEURE (VIS MAIOR)**

- 8.1 In the event of force majeure (vis maior), the Seller will be authorised, at its discretion, to suspend the performance of the delivery for a maximum period of three (3) months or to terminate the agreement in full or in part without intervention by the court, without being obligated to pay damages. Force majeure (vis maior) is understood to include every circumstance which the Seller could not have taken into account when the agreement was concluded and as a result of which the Buyer cannot reasonably require the ordinary performance of the agreement, e.g., war or threat of war, regardless of whether the Czech Republic is involved directly or indirectly, full or partial mobilisation, state of siege, terrorism or the threat of terrorism, sabotage, epidemics, natural disasters, fire or other destruction and damage in factories or warehouses, sit-ins, strikes, both in the business of the

Seller and in companies from which goods, raw materials and/or auxiliary materials are obtained, restrictive government measures of any nature whatsoever, restrictions on or impediments to production and/or the supply of goods, raw materials, auxiliary materials, fuel and/or electricity.

- 8.2 If the Seller is unable to comply with its delivery obligation due to force majeure (*vis maior*), the Buyer will be authorised to terminate any agreement with the Seller in full or in part, unless this is not justified in view of the duration of the force majeure (*vis maior*).
- 8.3 Performance by the Seller in one or more of the situations described in Article 8.1 does not diminish its right to use its power to suspend or terminate the force majeure (*vis maior*) in subsequent or different instances.

## **9. GUARANTEE & RETURN SHIPMENTS**

- 9.1 Goods are manufactured and placed on the market by the Seller with due observance of the applicable statutory requirements. Announcements made by or on behalf of the Seller with regard to the quality, composition, treatment in the broadest sense of the word, application options, properties, etc. of the goods are only considered guarantees if they are made in writing and explicitly in the form of a guarantee.
- 9.2 Goods that have been delivered may only be returned with the prior consent of the Seller (see Annex 1 hereto) and returned in accordance with the applicable legal regulations, unless agreed otherwise in writing.

## **10. BUYER'S DUTY OF CARE & CLAIMS FOR DAMAGES**

- 10.1 The Buyer must adequately familiarise itself with the properties (including any side-effects) of the goods purchased from the Seller.
- 10.2 The Buyer is required to strictly observe the rules and reasonable instructions given by the Seller with regard to the storage and handling of the goods delivered. The Buyer is required to inspect the goods and packaging upon receipt or otherwise as soon as possible and to the extent this can be reasonably required of the Buyer and/or in accordance with the Buyer's common practice. Defects to the goods and packaging discovered during this inspection, along with the defects not discovered until the product is used or consumed by the Buyer or third parties, must be reported to the Seller within 24 hours after discovery by the Buyer. The Buyer is required to take measures to limit the damage as much as possible. In so doing, the Buyer will in particular follow the instructions given by the Seller with regard to the goods and packaging. All liability lapses if the Buyer fails to comply with any of these obligations.
- 10.3 The Buyer is responsible for any and all permits and authorisations required to purchase the goods from the Seller, sell them on and/or use them. The Buyer must comply with all applicable laws and regulations, including the Guidelines of Good Manufacturing Practice for Medicinal Products and the Guide to Good Distribution Practice. The Buyer indemnifies and holds the Seller harmless against all claims based on the fact that the Buyer did not comply with the foregoing.
- 10.4 The Buyer will ensure that its records related to the goods delivered by the Seller comply with all requirements according to the applicable laws and regulations (in particular good distribution practice). The Buyer will ensure that the recipients of the goods can be traced within a short period. The Buyer will ensure that the goods delivered by the Seller remain identifiable and will not be mixed with other goods if this leads to the goods no longer being identifiable. Upon the reasonable request by the Seller, the Buyer will cooperate, free of charge, in recalls, campaigns for informing recipients of the goods about significant health risks relating to such goods or other similar campaigns.
- 10.5 The Buyer shall not present itself as a representative or agent or otherwise acting in the name and on behalf of the Seller or having authority to bind the latter with its actions in any manner. Nothing contained in these Terms and Conditions shall be deemed or construed as creating relations of agency or joint venture or partnership between the Seller and the Buyer.
- 10.6 The Seller's liability pursuant to an attributable failure in the product delivery is limited to personal injuries or damage to things and will never exceed the net sales price or the net invoice amount of the goods in question.

**11. AUDIT RIGHT**

In view of the existing anti-corruption legislation in force in the countries where the Seller and its Affiliates operate, the Buyer shall, on the Seller's written request, allow an independent auditor appointed by the Seller or its Affiliate to have access during normal working hours to the Buyer's documents as may be reasonably necessary to verify the accuracy of reporting and/or payments made as part of or in connection with the supplies of goods hereunder for any calendar year that ended not more than 36 (thirty six) months before such written request is made by the Seller. The cost of such audit shall be borne by the Seller unless significant discrepancies are found in the Buyer's records and/or documents during the audit.

**12. INTELLECTUAL PROPERTY RIGHTS & STUDIES**

- 12.1 All intellectual property rights related to the goods and related materials delivered remain with the Seller or its licensors.
- 12.2 Except in so far as permitted by law, the Buyer is not permitted to remove, modify or conceal, in full or in part, brand and/or identification marks on the goods delivered or the packaging thereof or to change or copy the goods or any part thereof.
- 12.3 The Buyer will immediately inform the Seller in writing of any claim by a third party in connection with the infringement of intellectual and/or industrial property rights with regard to the goods delivered to the Buyer. The Seller will be authorised in that event, also on behalf of the Buyer, to conduct a defence or take legal action against the relevant third party. The Buyer will at all times lend its cooperation to the Seller should the Seller so request in that respect.

**13. CONFIDENTIALITY & PUBLICITY**

- 13.1 The Seller and the Buyer will treat information and/or data related to the other party's operations which, by nature, are confidential, as strictly confidential and will not disclose same to third parties in any way whatsoever, unless this information and/or data were demonstrably already generally known when the first agreement between the Seller and Buyer was concluded, or if one party has authorised the other party in writing to disclose this information and/or data to a third party/parties.
- 13.2 The Buyer will not refer to agreements, offers and/ or deliveries of the Seller in publications or advertising in magazine, newspapers, reports, brochures or otherwise without prior written consent of the Seller.

**14. ETHICAL BUSINESS/CONFLICT OF INTEREST**

- 14.1 In its performance of agreements and deliveries of the Seller, the Buyer shall adhere to business practices that are in accordance with the letter and spirit of applicable laws and ethical principles as follows:
  - (a) All transactions in connection with the delivery of finished products, active pharmaceutical ingredients and/or services shall be accurately reflected in the Buyer's records, and no funds or other assets shall be paid directly or indirectly to government officials or persons acting on their behalf or to representatives of the other businesses for the purpose of influencing government decisions or actions with respect to the Seller's business.
  - (b) The Buyer shall conduct its activities hereunder so as to avoid loss or embarrassment to the Seller due to any real or apparent conflict of interest, and to require that all third parties involved by the Buyer comply with such policy.
- 14.2 The Seller shall have the right to terminate agreements and deliveries upon violation of said business practices on the part of the Buyer, its employees, agents, representatives, subcontractors, consultants, or other third parties involved by the Buyer.

**15. SEVERANCE**

- 15.1 If these Terms and Conditions are or become partially invalid or non-binding, the parties will continue to be bound by the remainder of the Terms and Conditions. In such instance, the Seller will be authorised to replace the invalid or non-binding part by clauses that are valid and binding, the legal

consequences of which, in view of the contents and purport of these Terms and Conditions, correspond with the invalid or non-binding part as much as possible.

**16. CHOICE OF LAW**

- 16.1 Agreements between the Seller and the Buyer are governed by the laws of the Czech Republic such with the exclusion of the Vienna Sales Convention (CISG).
- 16.2 Any disputes arising from or related to an agreement concluded between the Seller and the Buyer regarding the delivery of goods by the Seller to the Buyer will, in the first instance, be brought exclusively before the respective Czech courts.



## ANNEX 1

### Returns Policy for Products of Merck Sharp & Dohme s.r.o.

Merck Sharp & Dohme s.r.o. (hereinafter: the "Seller") apply the following rules with regard to returns by the buyer (hereinafter: the "Buyer"), unless agreed otherwise in writing. These rules apply only to the last delivery of the relevant product, in other instances there is no right of return.

Situation	Conditions	Returns policy and crediting	Comments
1. Products ordered erroneously by the Buyer.	N/A	0% return and 0% crediting.	
2. Products delivered erroneously by the Seller (product A instead of product B).	Reported to the Seller in writing within 24 hours after delivery.	100% return and 100% crediting.	
3. Damaged goods received.	Reported to the Seller in writing within 24 hours after delivery.	100% return and 100% crediting if the damage occurred prior to delivery (see Article 4.2 General Terms and Conditions), otherwise 100% return and 0% crediting.	
4. Complaints related to the product (complaint about quality).	Reported to the Seller as soon as possible in writing.	100% return and 100% crediting, if the complaint is declared valid by a qualified representative of the Seller.	Damage occurring in the Buyer's warehouse is not covered by quality complaints.
5. Products with a shelf life > than 12 months that are delivered with a remaining shelf life of <12 months or products with a shelf life ≤ 12 months that are delivered with a remaining shelf life of < 6 months.	Reported to the Seller in writing within 24 hours after delivery.	100% return and 100% crediting.	
6. Goods the Buyer has in stock, the shelf life of which has expired.	N/A	0% return and 0% crediting.	There is no compensation for items in stock.