



SCHERING PLOUGH ANIMAL HEALTH LIMITED (NZCN 7232) trading as MSD Animal Health(MSD) TERMS AND CONDITIONS OF SALE

This document sets out the terms and conditions of sale ("**Terms**") between Schering-Plough Animal Health Limited trading as MSD Animal Health (New Zealand) ("**MSD**") and any person acquiring Products from MSD ("**Purchaser**"). By placing an order with MSD, the Purchaser agrees to be legally bound by these Terms, except to the extent that a separate supply agreement has been entered into between MSD and the Purchaser, the terms of which will apply to that separate supply and will, to the extent of any inconsistency, prevail over these Terms.

1. Definitions and Interpretation

1.1. Definitions

The following definitions apply unless the context requires otherwise:

Affiliates means in relation to a party, a person directly or indirectly Controlling, Controlled by or under common Control of that party.

Business Day means a day which is not a Saturday, Sunday or a statutory public holiday in New Zealand.

Control means in respect of a person, whether directly or indirectly:

- (a) the power to vote 50% or more of the voting interests of a person;
- (b) the position to derive more than 50% of the benefit of the existence or activities of the other person;
- (c) the power to appoint or remove the majority of the members of the governing body of the person; or
- (d) the power to control the affairs or policies of the other person.

Delivery Point has the meaning given to that term in Clause 4.4.

Force Majeure Event means an act of god, war, sabotage, riot, insurrection, act of terrorism, civil commotion, national emergencies (whether in fact or law), strikes, lock-outs or other industrial disturbance, accidents, uncontrollable delays in transportation, inability to obtain any necessary materials, equipment, facilities or qualified employees, or the effect of any applicable laws, orders, rules or regulations or other matters beyond the reasonable control of MSD.

Goods means any products, applications, components, items or goods supplied by MSD to the Purchaser.

GST means goods and services tax chargeable, or to which a person may be liable, under the GST Law.

GST Law means the New Zealand *Goods and Services Tax Act 1985*.

Insolvency Event means an event whereby:

- (a) except for the purposes of a solvent reconstruction or amalgamation previously approved by MSD in writing:
 - (i) an application or an order is made, proceedings are commenced, a resolution is passed or proposed in a notice of meeting or an application to a court or other steps are taken for the winding up, dissolution, official management or voluntary administration of the Purchaser or as permitted by law; or
 - (ii) the Purchaser enters into any arrangement, compromise or composition with or assignment for the benefit of its creditors or any class of them or as permitted by law;
- (b) the Purchaser ceases, suspends or threatens to cease or suspend the conduct of its business or disposes of or threatens to dispose of its assets other than in the ordinary course of its business or as permitted by law;
- (c) the Purchaser is, or is deemed under any applicable legislation to be, unable to pay its debts when they fall due (other than as a result of the failure to pay a debt or claim the subject of a good faith dispute) or stops or suspends or threatens to stop or suspend the payment of all or any class of its debts or as permitted by law; or
- (d) a receiver, manager, administrator or similar officer is appointed to the Purchaser or any part of its property or a distress, attachment or other execution is levied or enforced or as permitted by law.

Invoice means a document notifying an obligation to make a payment which is issued by MSD to the Purchaser for the supply of Products.

Price means the price for the Products as specified on the Price List or in the relevant agreement.

Price List means the price list notified to the Purchaser by MSD from time to time (if any).

Products means Goods and/or Services.

Purchaser means a person placing an order with MSD for the purchase of Products.

Services means anything other than Goods supplied to the Purchaser by MSD. This includes, but is not limited to, installation, training, after-sales support.

1.2. Interpretation

Headings are for convenience only and do not affect

interpretation. The following rules of interpretation apply unless the context requires otherwise:

- (a) the singular includes the plural and conversely;
- (b) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (c) a reference to a person includes a body corporate, an unincorporated body or other legal entity; and
- (d) a reference to anything after the words "includes or including" or similar expressions does not limit what else might be included.

2. General

2.1. Application of Terms

These Terms shall:

- (a) apply to all orders for Goods placed by the Purchaser, and all Goods supplied to the Purchaser by MSD;
- (b) be read subject to the express terms and conditions contained in MSD's quotation or confirmation of order, to the extent applicable;
- (c) prevail if there is a conflict between the Purchaser's order and these Terms or MSD's confirmation of order; and
- (d) supersede all prior oral arrangements.

2.2. General Exclusions

- (a) These Terms shall apply to the exclusion of all other terms and conditions (express or implied by law, including under Part 3: Sale of Goods of the Contract and Commercial Law Act 2017 and the United Nations Convention on Contracts for the International Sale of Goods), except to the extent that the exclusion of any such term or condition is contrary to law.
- (b) These Terms shall not supersede a fully executed agreement that has been entered into between MSD and the Purchaser for the Goods which prevails over these Terms.

2.3. Amendment

MSD reserves the right to vary or add to these Terms at any time by providing 30 days' notice in writing to the Purchaser. The amended Terms will apply to all orders made by the Purchaser after the expiry of the notice period.

2.4. No Waiver

No failure to exercise or any delay in exercising any right, power or remedy under these Terms by MSD operates as a waiver of that right, power or remedy. A single or partial exercise, or waiver of the exercise, of any right, power or remedy does not preclude any other further exercise of that or any other right, power or remedy by MSD. A waiver is not valid or binding on MSD unless made in writing.

2.5. Governing Law

These Terms, and any contract for the sale and purchase of Products arising between the parties pursuant to these Terms, are to be governed and construed in accordance with the laws of New Zealand. MSD and the Purchaser accept the non-exclusive jurisdiction of the courts of New Zealand in relation to any dispute between them.

3. Orders

3.1. Right to Accept or Decline

The Purchaser may from time to time order Products by submitting to MSD a completed purchase order in the form determined by MSD. All orders received from the Purchaser are binding on the Purchaser upon receipt by MSD and cannot be cancelled or changed without MSD's consent. MSD reserves the right to accept, decline or amend, in whole or in part, any order placed by the Purchaser.

3.2. Handling/Distribution Fee

For veterinary medicines, the Purchaser agrees to pay to MSD the following freight/distribution charges in addition to the Price for Goods:

- (a) \$65 freight/distribution charge on all purchase orders for Goods below \$600 in value (excluding GST); and/or
- (b) orders requested with urgent or special delivery instructions may, at the sole discretion of MSD (being exercised reasonably), incur additional freight and handling costs.

The freight/distribution charge set out in clause 3.2(a) is subject to change and MSD will notify the Purchaser the final freight/distribution charge payable by the Purchaser at the time the order is confirmed by MSD.

For non-veterinary Goods, excluding Sure Petcare® range of Goods, the Price will include freight and handling charges unless advised otherwise in writing by MSD.

For Sure Petcare® range of Goods, \$12 (including GST) freight/distribution charge on all purchase orders below \$50 (including GST).

3.3. Standard Shipper Quantities

The Purchaser must order Goods in standard shipper quantities or in accordance with the minimum order requirements, as notified in writing to the Purchaser from time to time (as applicable).

3.4. Specific requirements

If the Purchaser requires dry ice to be shipped with any order, or if any specific packaging is required for particular Goods, MSD will charge the Purchaser in accordance with MSD's standard pricing which may be revised from time to time. MSD will notify the Purchaser the packaging charge payable by the Purchaser at the time the order is confirmed by MSD.

3.5. Back Orders

If MSD is unable to fill any order in whole or in part at

the time that it is placed by the Purchaser, MSD will place the Goods on back order and confirm to the Purchaser that it has done so. MSD will then fulfil the order once the Goods are available in stock. Other than as expressly set out in these Terms, MSD will not be liable for any loss or damage, including consequential or indirect loss, or loss of profits, suffered by the Purchaser in connection with any delay in fulfilling or inability to fulfill any order in whole or in part for any reason.

4. Delivery

4.1. General

The supply of Products may be made by MSD or its authorised contractors or agents.

4.2. Delivery of Goods

Delivery of the Goods occurs when the Goods arrive at the Delivery Point specified in the order by the Purchaser ("**Delivery**"). For the avoidance of doubt, there may only be one Delivery Point for each Delivery.

4.3. Off-Loading Facilities

The Purchaser shall provide secure and suitable offloading facilities at the Delivery Point to facilitate the safe and timely Delivery of the Goods. MSD will not be responsible for any delay in the delivery of Goods or failure to Deliver Goods caused by the Purchaser's failure to comply with this clause.

4.4. Delivery Point

Delivery of Goods will be made to the delivery point specified in the order by the Purchaser (**Delivery Point**). Any change to the Delivery Point must be notified to MSD within 7 days of confirmation of the order by MSD.

4.5. Non-Receipt of Goods

- (a) The Purchaser must notify MSD in writing of any non-receipt of Goods or where the Goods received do not match the quantity or description of Goods ordered within 7 days of the expected date of delivery (in the case of non-receipt of Goods) or the date of Delivery where the Goods do not match the order).
- (b) Where the Goods have not been Delivered, the notice must specify the invoice number, quantity and description of the Goods which were not delivered.
- (c) Where there is an error in the fulfilment of the Purchaser's order, the notice must specify the quantity and description of the Goods actually received and the quantity and description of the Goods ordered, as well as the invoice number.

4.6. Credit for Non-Receipt of Goods or Error in Fulfilment of Order

- (a) If the Purchaser does not notify MSD of the non-receipt of any Goods in accordance with

clause 4.5 above, MSD is not required to give a credit to the Purchaser for those Goods and Delivery of the Goods is deemed to have occurred. If notification is given in accordance with clause 4.5 and a claim for credit is approved by MSD, the Purchaser will be entitled to a credit. This is the Purchaser's sole and exclusive remedy for any loss or damage suffered or incurred in connection with MSD's failure to Deliver Goods.

- (b) If the Purchaser does not notify MSD of any errors in the fulfilment of the order in accordance with clause 4.5, the Purchaser is deemed to have accepted the Goods. If notification is given in accordance with clause 4.5, MSD will either credit the Purchaser the value of Goods that are the subject of the order but which were not Delivered or provide the Goods that correctly match the quantity or description (or both) specified in the relevant order. The Purchaser will comply with MSD's instructions for the return of Goods that were Delivered in error. The remedies set out in this clause is the Purchaser's sole and exclusive remedy for any loss or damage suffered or incurred in connection with any error made by MSD in the fulfilment of an order.

4.7. Dates for Delivery

The date for delivery of Products specified by MSD (if any) is the estimated date for delivery only. MSD will not be liable for any loss or damage, including consequential loss, or loss of profits, suffered by the Purchaser arising from, or related to, any late delivery of Products. If MSD is unable to make a delivery because of a Force Majeure Event, then the estimated date of delivery will be extended until the cessation of the Force Majeure Event.

4.8. Service Terms

The following terms and conditions apply to any Services provided by MSD:

- a) The Purchaser shall be responsible for any preparation required for the Services.
- b) The Purchaser shall provide MSD with advance notice of any rules, regulations, statutes and requirements applicable to the Services, including any required permits and licenses, that are applicable to the Purchaser's local jurisdiction.
- c) MSD may refuse, without any liability, to provide Services and to allow MSD personnel to suspend Services or vacate any site where, in MSD's opinion, performance of Services would pose a risk to the health or safety of any person. In such event, the Purchaser is responsible for payment of any delay and/or travel time at MSD's regular service rates.
- d) The Purchaser is solely liable for all damages or injuries caused or contributed to by the

Purchaser that may occur, except to the extent damage or injury is directly caused by the gross negligence or wilful misconduct of MSD personnel.

5. Storage of Goods

5.1. Pack Requirements

The Purchaser must store the Goods in accordance with the storage requirements stated on each pack including refrigerated, cool, and dry storage facilities where required. MSD will not be liable for any damage or defect caused to Goods due to the Purchaser failing to comply with the storage instructions.

6. Payment

6.1. Time for payment

Payment for the Products supplied by MSD shall be made by the Purchaser and received by MSD no later than the 20th of the month following the date of the invoice issued by MSD in respect of those Products. If payment in full is not received on or before the due date then, in addition to MSD's other rights and remedies, the Purchaser must pay interest on the unpaid amount, from the date that payment was due until the date that it is paid in full to MSD (plus interest), the interest on the unpaid amount is calculated on a daily basis at the New Zealand Reserve Bank's official cash rate plus 5% (p.a.). Payments may be made via electronic funds transfer (EFT).

6.2. Claims or Disputes on Invoices

If there are any claims or disputes about an invoice raised by MSD the claim must be made within 60 days from the date of invoice. Any claim made outside of this time frame will not be accepted by MSD.

6.3. Remedies for Non-Payment and Breach

If payment for the Products is not made in full by the invoice due date, an Insolvency Event occurs, or the Purchaser breaches any of these Terms, then all amounts owing by the Purchaser to MSD will become immediately due and payable without demand and MSD is entitled to (without limiting any other rights or remedies it may have against the Purchaser) do any or all of the following:

- (a) terminate or suspend any contract (in whole or in part) with respect to the Products by written notice to the Purchaser;
- (b) suspend any further delivery of the Goods;
- (c) suspend any further provision of the Services
- (d) require full payment in advance for any further supply of the Products or provision of the Services; or
- (e) withhold any rebates.

7. Price

7.1. Price List

The purchase price payable by the Purchaser to MSD for all Products ordered by the Purchaser shall be as stated in the Price List current at the time the order is placed (or at such other price as the Purchaser and MSD agree in writing). All Prices are payable in New Zealand Dollars and are stated exclusive of GST and freight/distribution charges or special packaging charges, unless otherwise stated by MSD.

7.2. Price Reduction

No credit will be given to the Purchaser for stock on hand in the event of a price reduction. If the Purchaser has already ordered Goods but has not yet received Delivery, a credit for the price reduction will be applied.

7.3. Prices Subject to Change

Prices are subject to change by MSD without notice. However, MSD will endeavour to notify the Purchaser of any change to the Price 30 days prior to its implementation.

7.4. GST

Notwithstanding any other provision in this agreement, if MSD (or, where MSD is a member of a GST group, the representative member of that group) is or becomes liable to pay GST in respect of any supply made by it to the Purchaser, the Purchaser must pay in addition to and at the same time as the amount otherwise payable for the supply, an amount equal to that amount of that GST, subject to receipt of a tax invoice.

8. Risk and Title to Goods

The risk in and title to the Goods sold by MSD will pass to the Purchaser upon Delivery in accordance with clause 4.2 above.

9. Personal Property Securities Act 1999 ("PPSA")

- 9.1. The Purchaser acknowledges that these Terms constitute a security agreement which creates a security interest in favour of MSD in any personal property, as defined by the PPSA ("**Personal Property**"), supplied by MSD to the Purchaser (including all Personal Property previously supplied by MSD to the Purchaser (if any) and all after acquired Personal Property supplied by MSD to the Purchaser).
- 9.2. The Purchaser further acknowledges that these Terms create a purchase money security interest ("PMSI") in the Personal Property and all future Personal Property supplied by MSD to the Purchaser and that the PMSI has attached to all Personal Property now or in the future that is supplied by MSD to the Purchaser.
- 9.3. The Purchaser undertakes to:
 - (a) sign any further documents and/or provide any further information (which information the Purchaser warrants to be complete, accurate and current) which MSD may reasonably require to enable registration of a financing statement or financing change on the Personal Property

Securities Register to ensure that the security interest is otherwise enforceable, perfected and effective;

- (b) indemnify, and upon demand, reimburse MSD for all expenses incurred in registering a financing statement or financing charge statement on the PPSR; and
- (c) give not less than 14 days prior written notice of any proposed change in details, including, but not limited to, changes of address, entity or business name and/or contact details.

9.4. The Purchaser agrees to waive its rights listed in section 107(2) of the PPSA and its rights to receive verification statements under section 148 of the PPSA. The Purchaser further agrees that sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133 and 134 of the PPSA will not apply.

9.5. The Purchaser acknowledges that MSD may exercise its rights in section 108, 109, 111(1) and 120(1) of the PPSA whether or not MSD has priority over all secured parties and that MSD may charge the Purchaser for complying with a demand under section 162 of the PPSA.

10. Return of Goods

10.1. Goods return authority

- (a) Nothing in this clause 10 has the effect of limiting any rights of the Purchaser which cannot be excluded or limited at law, including under the Consumer Guarantees Act 1993.
- (b) Subject to clause 10.1(a), MSD will only accept returned Goods for credit or replacement if they come into any of the following categories:
 - (i) Goods that MSD is reasonably satisfied were damaged in transit between the MSD warehouse and the delivery point nominated by the Purchaser;
 - (ii) incorrect supply; such as Goods that do not match the quantity or description (or both) specified in the order;
 - (iii) Goods that MSD is reasonably satisfied are faulty in materials or workmanship.
- (c) Without limiting the other provisions of this clause 10 and to the extent permitted by law, returned Goods will not be accepted for a credit or replacement in the following cases:
 - (i) Goods sold on a non-return basis;
 - (ii) Goods having a broken seal or label removed; or
 - (iii) Goods that have exceeded their expiry date.

10.2. Claim for damaged or defective Goods

- (a) MSD will only accept returned Goods for a credit or replacement where a "goods return authority" has been issued by MSD.
- (b) If the Purchaser wishes to make a claim for a credit or replacement under clause 10.1 above, it must notify MSD in writing within 30 days of when the Purchaser becomes aware the Goods are damaged or defective, or should have reasonably been aware the Goods are damaged or defective ("**Written Notice**"). The Written Notice must specify the relevant Goods and the basis on which the Purchaser claims a credit or replacement, together with any relevant documentary evidence of how the Goods are damaged or defective.
- (c) If the Purchaser wishes to make a claim for Goods which are damaged or defective by reason of a temperature excursion upon arrival at the Delivery Point, in order to be eligible for a credit or replacement the Purchaser must notify MSD in writing within twenty-four hours of the Delivery of those Goods and must provide such evidence of the temperature excursion as MSD may reasonably require.
- (d) If the Purchaser's claim for credit or replacement is approved by MSD, the Purchaser will return the Goods to MSD or destroy the Goods and provide MSD with evidence of the destruction, as directed by MSD.
- (e) The provision of a credit or replacement by MSD is the Purchaser's sole and exclusive remedy for any damaged or defective Goods.

10.3. Product Recall

Claims for credit or replacement of Goods as a result of a product recall or quality control examination must be referred to MSD's customer service: (customer.servicesnz@msd.com).

10.4. Transportation of Goods for Return

Transportation of Goods for return, other than for the reasons set out in clause 10.1(b), will be the responsibility of the Purchaser and at the Purchaser's expense unless such responsibility and expense are accepted in writing by MSD.

11. Warranties and Product Liability

11.1. Warranty

The Products supplied by MSD to the Purchaser may be covered by a warranty. If this is the case, MSD shall deliver the terms of such warranty to the Purchaser in writing, provided in relation to Sure Petcare branded products the terms of their warranty are published at <https://www.surepetcare.com/en-au/warranty>. The parties agree that any warranty is being provided in trade. The Purchaser acknowledges that following the expiry of the applicable warranty for each of the Products supplied by MSD, if any, the Purchaser must pay for any parts used to repair or replace the Product,

as well as the relevant Service fees. The price for such parts and the relevant Service fees will be determined in accordance with the current list price provided by the party who has agreed to supply the parts or carry out the repair or replacement work.

11.2. Exclusion of implied terms

For the purposes of section 5D of the Fair Trading Act 1986 (**FTA**) and section 43 of the Consumer Guarantees Act 1993 (**CGA**):

- (a) the Products provided to the Purchaser under or in connection with this Agreement are being provided and acquired in trade;
- (b) if the FTA and/or CGA applies to any Products supplied to the Purchaser under or in connection with this Agreement, to the extent permitted by law, the parties agree to contract out of the CGA and sections 9, 12A and 13 of the FTA; and
- (c) it is fair and reasonable for the parties to be bound by this clause.

The Purchaser acknowledges that it has had a reasonable opportunity to review these Terms.

11.3. CGA exclusions for resupply

- (a) Where the Purchaser is acquiring the Products for resupply, then the Purchaser agrees that it will, to the maximum extent permitted by law, contract out of the application of the CGA within the contract for resupply of the Products, to the extent that the CGA applies to such Products.
- (b) If the Purchaser fails to contract out of the CGA in accordance with the above clause, the Purchaser indemnifies MSD for any damage or expenses that MSD may incur as a result of any claim being brought against MSD by the customer who purchases or receives the Products, which would have otherwise been barred had the Purchaser contracted out of the CGA.

11.4. Limitation of Liability

In respect of Products supplied by MSD to a Purchaser and to the extent permitted by law:

- (a) except for any conditions or warranties issued in writing by MSD, the Purchaser agrees that it has not relied on any inducement, representation or statement made by or on behalf of MSD in purchasing the Products and that there are no implied conditions or warranties herein and no collateral contracts in connection with the Products (except such as may be in writing and signed by a duly authorised representative of MSD);
- (b) MSD will not be liable to make good any expenditure, damages and/or loss arising out of any use or dealing with any Products, whether from any defect in the Products or otherwise;

- (c) MSD's maximum aggregate liability whether in tort (including negligence), contract or otherwise arising from the relationship between the parties for any loss, damage or injury arising directly or indirectly from any defect in the Goods or any other breach of these Terms by MSD will be limited to:

- (i) in the case of Goods, the cost of replacing the Goods, the cost of obtaining equivalent replacement Goods, or the cost of having the Goods repaired, whichever is the lowest amount;
 - (ii) in the case of Services, the greater of (i) the amount of the total fees paid to MSD by the Purchaser for Services, and (ii) NZD \$17,000;
- (d) notwithstanding any other provision in these Terms or any contract arising between MSD and the Purchaser, MSD will not under any circumstances be liable for any special, consequential, indirect loss, damage, harm or injury suffered or incurred by the Purchaser; and
- (e) the Purchaser must promptly notify MSD of, and provide MSD with details of, any adverse event reports in respect of the Products and authorises MSD to deal direct with the person who lodged (and/or was the subject of) the adverse event report and will be handled by MSD and, if any adverse event is reported by a consumer, or a claim concerning an adverse event is made by a consumer, MSD will deal directly with the consumer. The Purchaser must not settle any such claims on its own account without MSD's prior written consent.

11.5. Time Limit

To the extent permitted by law, and subject to the other time limits for actions to be taken as set out in these Terms, MSD excludes all liability for loss or damage suffered by the Purchaser unless the Purchaser commences an action within six years of the date of delivery of the Products.

11.6. Contract and Commercial Law Act 2017

Clause 11.1 is intended to be for the benefit of, and enforceable by, MSD's subcontractors and agents for the purposes of Part 2, Subpart 1 of the Contract and Commercial Law Act 2017

12. Resupply

12.1. Resupply to Third Parties

Following Delivery of the Goods, the Purchaser shall have the right to sell those Goods in its own name and not as agent for MSD by way of bona fide sale on the Purchaser's usual commercial terms and in the ordinary

course of its business, provided that the Purchaser complies with the conditions below.

If the Purchaser on-sells, transfers or distributes the Goods to a third person:

- (a) the Purchaser represents and warrants to MSD that it will not make any representations, claims or warranties with respect to the Goods which are false or misleading or does not otherwise comply with the law;
- (b) the Purchaser shall indemnify and hold harmless MSD against any claim, action, proceeding, damage, loss, cost, expense or liability incurred or suffered by it arising out of the supply of the Goods to third persons (whether those Goods have become mixed with other Goods, or otherwise comprised in other Goods), except to the extent that such liability arises as a direct result of the negligence of MSD;
- (c) the Purchaser shall distribute to the third person all warnings, instructions and like information relating to the Goods as provided with the relevant Goods or as published by MSD on its websites;
- (d) the Purchaser must not change, modify or otherwise tamper with the packaging and labelling of the Goods, or re-brand the Goods; and
- (e) the Purchaser of veterinary medicines must provide and must ensure that any third person supplied with the Goods for resale provides appropriate product stewardship for the Goods by way of a reputable animal health business which is sufficiently resourced by qualified persons to interpret the animal health advice and any veterinary medical descriptions provided to support the proposed use of the Goods and meet any product registration or other regulatory requirements.
- (f) MSD retains the right to withhold the supply of Goods if MSD reasonably determines that the Purchaser is not able to comply with the above conditions.

12.2. Re-supply outside New Zealand

The Goods supplied under these Terms are packaged for sale and supply in New Zealand only.

Unless otherwise agreed with MSD, the Purchaser must not on-sell, transfer or distribute Goods to any person that the Purchaser knows (or has reasonable grounds for believing), will resell, transfer or distribute the Goods to anyone else, overseas.

13. Licences and Approvals

The Purchaser must obtain all necessary licences and approvals and comply with all relevant New Zealand legislation in relation to the resale, transfer or distribution of Goods purchased from MSD under these Terms.

14. Barcodes

MSD may in its discretion print GS1 numbers and/or barcodes on the Goods. MSD will endeavour to observe the rules and principles of GS1 New Zealand or any successor to it but will not be liable to the Purchaser for any loss, damage or expense attributable either directly or indirectly to an absence of, or error in, numbering or barcodes.

15. Confidentiality

- 15.1. Any confidential information disclosed or made available by MSD to the Purchaser must be held in the strictest confidence. Releasing, copying or any use of any of that information requires the prior written consent of MSD. For the purpose of this clause, “**confidential information**” includes all information given or disclosed to the Purchaser including any information that the Purchaser was exposed to or created during the Services, if:
 - (a) That information is identified as confidential or proprietary to MSD or a third party; or
 - (b) The Purchaser ought reasonably to have known that the information was proprietary or confidential to the Purchaser or a third party.
- 15.2. Any drawings, illustrations or manuals which are produced by MSD at its discretion as an aid to providing Services to the Purchaser shall be and remain the exclusive property of MSD.
- 15.3. The Purchaser acknowledges that MSD has intellectual property rights (including but without limitation, patents, registered designs and trademarks) in respect of the Goods and undertakes not to infringe those rights.

16. Privacy Act 2020

The Purchaser authorises MSD to collect, retain, use or disclose the Purchaser's personal information, for the purpose of complying with Clauses 17 and 18 of this Agreement, assessing the Purchaser's creditworthiness, marketing any Products and services provided by MSD to any other party, or collecting unpaid accounts from the Purchaser, and otherwise in compliance with the Privacy Act 2020.

17. Ethical Business Clause

- (a) In performing its obligations hereunder, the Parties acknowledge that the corporate policy of MSD and its Affiliates requires that MSD's business be conducted within the letter and spirit of the law. The Parties agree to conduct the business contemplated herein in a manner which is consistent with all applicable laws, including the U.S. Foreign Corrupt Practices Act, and good business ethics as described in this Ethical Business Clause and 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/business-partner-code-of-conduct/>. Specifically, Purchaser warrants and agrees

that in connection with these Terms and the MSD business relating thereto, it, its Affiliates, their respective representatives, and anyone acting on their behalf shall not offer, make or promise any payment, either directly or indirectly, of money or other assets (hereinafter collectively referred to as "Payment"), to any government, political party or international organisation official, candidate or persons acting on behalf of any of the foregoing or directly associated with them including their staff, business partners, close associates and family (hereinafter collectively referred to as "Officials") where such Payment would constitute a violation of any applicable law. In addition, regardless of legality, the Parties shall make no Payment, either directly or indirectly, to Officials if such Payment is for the purpose of improperly influencing decisions or actions with respect to the subject matter of these Terms or the business activities of MSD or its Affiliates.

- (b) Purchaser represents, warrants and covenants that all books, records, invoices, and other documents relating to payments and expenses under these Terms or any Order are and shall be complete and accurate and reflect in reasonable detail the character and amount of transactions and expenditures.
- (c) Purchaser further represents, warrants and agrees that no "off the books" or other similar funds will be maintained or used in connection with these Terms or any Order.
- (d) Any violation of, or any breach of a representation or warranty set forth in, this Ethical Business Clause shall be a material breach of these Terms, and in such event MSD may terminate these Terms immediately in writing without payment of penalty or damages or further performance of any kind.