

MERCK PTY LIMITED, AUSTRALIA

GENERAL CONDITIONS OF SALE

In these conditions:

- (1) "Merck" means Merck Pty Ltd ACN 005 064 791 of 207 Colchester Road, Kilsyth 3137;
- (2) "customer" means the buyer of the goods specified overleaf; and
- (3) "goods" means the products and, if any, services, specified overleaf.

1. ACCEPTANCE OF ORDERS

Merck reserves the right to accept or reject any order for goods and may withhold goods contracted to be sold if there are reasonable grounds to doubt the solvency of the customer. In such circumstances the customer agrees that Merck may withhold goods without repudiating the contract and without incurring any liability whatsoever.

2. TERMS OF SALE

These conditions apply to the goods and all other products sold by Merck. They may only be waived or varied in writing signed by Merck and shall prevail over all conditions of the customer's order or other documents to the extent of any inconsistency.

3. PRICES & GST

- (a) Unless otherwise stated, all prices quoted are exclusive of GST.
- (b) Prices are recommended prices only at the date of quotation and may be subject to change without notice. They will also vary due to fluctuations in exchange rates, rates of freight, insurance, customs duties, shipping expenses, sorting and stacking charges, cartage, and cost of materials and production.

4. DELIVERY

- (a) Merck will make all reasonable efforts to have the goods delivered to the customer on the date agreed between the parties as the delivery date. However, Merck will not be liable for late or non-delivery or any loss, damage or delay occasioned to the customer or its customers arising from late or non-delivery or late installation. The customer acknowledges that delivery does not include unloading from the carrier upon arrival at the place of delivery.
- (b) Merck reserves the right to make a reasonable charge for storage if delivery instructions are not provided by the customer within fourteen days of a request by Merck, or if the customer requires delivery to be postponed or is unable to receive the goods for any reason. Merck may store the goods at its own or other premises at the customer's risk.
- (d) Packaging materials and method of consignment shall be at Merck's discretion. A special charge may be made to meet the cost of the customer's specific packaging or consignment requirements.

5. PAYMENT

Payment must be made in full within 30 days of the date of invoice. Interest may be charged on all overdue account at the ordinary Commonwealth Bank lending rate plus 4%. Merck reserves the right to withhold deliveries when accounts become overdue.

6. RIGHTS IN RELATION TO GOODS

- (a) Merck reserves the following rights in relation to the goods until all accounts owed by the customer to Merck are fully paid:
 - ownership of the goods;
 - to enter the customer's premises (or the premises of any associated company or agent where the goods are located) without liability for trespass or any resulting damage and retake possession of the goods; and
 - to keep or resell any goods repossessed pursuant to (b) above.
- (b) Until the date of final payment, the customer shall store the goods so that they are clearly identified as the property of Merck.
- (c) If the goods are resold, or products manufactured using the goods are sold, the customer must hold such part of the proceeds of any such sale as represents the invoice price of the goods in a separate, identifiable account as the beneficial property of Merck and must pay such amount to Merck on request. Notwithstanding this provision, Merck shall be entitled to maintain an action against the customer for the price of the goods.
- (d) In addition to any lien to which Merck may be entitled by statute or otherwise, in the event of a customer's insolvency, bankruptcy or winding up, Merck will have a general lien on all property or goods belonging to the customer in Merck's possession (whether or not such goods have been paid for) for all amounts owed to Merck by the customer.

7. FORCE MAJEURE

If Merck is prevented from or delayed in performing any of its obligations under the Contract by force majeure, including but not limited to strikes, lock outs or other industrial action, whether or not caused by or involving employees of Merck, then Merck may give notice in writing to the customer of the circumstances constituting force majeure and the obligation which is delayed or prevented from being performed and shall then be excused from compliance with such obligation for as long as force majeure continues.

8. WARRANTIES

- (a) Merck's liability in respect of a breach of a condition of warranty implied by Div 2 of Pt V of the Trade Practices Act 1974 (other than section 69) is limited to:
 - (i) in the case of goods, replacing the goods, supplying equivalent goods, or the cost of replacing the goods or supplying equivalent goods, repairing the goods or the cost of repairing the goods;

- (ii) in the case of services, supplying the services again or paying the cost of having the services supplied again.
- (b) Merck's liability under section 74(h) of the Trade Practices Act 1974 is expressly limited to a liability to pay the customer an amount equal to the lowest of:
 - (i) the cost of replacing the goods;
 - (ii) the cost of obtaining equivalent goods; or
 - (iii) the cost of having the goods repaired,

9. GUARANTEE

- (a) Merck's liability for goods manufactured by it is limited to repairing any defects, or at Merck's option replacement, within 12 months of supply, provided the defects have arisen solely from faulty materials and workmanship and the goods have been handled, stored and used in accordance with Merck's instructions.
- (b) If the goods are not manufactured by Merck the customer accepts that the guarantee of the manufacturer is the only guarantee given to the customer and Merck will assign the benefit of any warranty to the customer on request (to the extent it is assignable).
- (c) Merck is not liable for, and the customer releases Merck from, any claims in respect of faulty or defective design of any goods supplied unless the design has been wholly prepared by Merck and the responsibility for any claim has been specifically accepted by Merck in writing. In any event, Merck's liability under this condition is limited strictly to the replacement of defective parts in accordance with para (a) of this condition.
- (d) Except as provided for in these conditions, all express and implied warranties, guarantees and conditions under statute or general law are expressly excluded. Merck is not liable for any physical or financial injury, loss or damage or consequential loss or damage of any kind arising out of the supply and or installation of the goods or arising out of Merck's negligence or in any way whatsoever.

10. INDEMNITY

The customer shall comply with all instructions of Merck in relation to the handling, storage, sale and use of the goods. The customer shall keep Merck indemnified against all losses, claims, damages or liabilities of whatsoever nature including, without limitation, claims for death, personal injury, damage to property and consequential loss, which arise in connection with a breach of these conditions or negligence of the customer or its employees, agents and duly authorised officers.

11. WAIVER

A failure by Merck to insist upon strict performance of any of terms and/or conditions will not be deemed to be a waiver of its rights under this contract or a waiver of any subsequent breach by the customer of any condition.

12. INDUSTRIAL PROPERTY RIGHTS

The customer shall not alter, remove or in any way tamper with any of the trade or other marks or numbers of Merck attached to or placed upon the goods.

13. CLAIMS

In the event that any prices/charges made by Merck are in dispute, the customer must notify Merck of such disputed prices/charges within 30 days from date of invoice. Claims disputing receipt of goods must also be made within 30 days of date of invoice.

14. RETURNS AND DEFECTIVE GOODS

- (a) Merck is not obliged to accept goods returned by the customer and will only do so on terms to be agreed in writing in each case.
- (b) The customer must notify Merck of any defect in the goods found during normal checking within 14 days of receipt of the goods. Merck may replace the goods, repair the defect or refund the purchase price at its discretion.

15. RESTOCKING FEE / CANCELLATION OR RETURN OF INDENTS

Subject to agreement, Merck will accept the return of Stock Lines within 30 days of date of invoice. The customer will cover all outgoing and incoming freight charges, and will incur a minimum restocking fee of \$60.00. Non stock lines, known as Indents, cannot be cancelled once they have been confirmed as shipped from their point of departure. Once delivered, will Merck cannot accept their return.

16. REGULATORY AFFAIRS

It is the customer's responsibility to observe all applicable health, safety and other regulations and to take appropriate steps in relation to the storage, handling, sale and use of the goods. Where information is supplied to the customer about potential hazards relating to the goods, the customer must bring such information to the attention of its employees, agents, sub-contractors, visitors and customers.

17. APPLICABLE LAW

This contract is made in Victoria, being the place from which this document is issued, and the parties agree that all disputes between them shall be governed by the laws of Victoria.