

**TERMS AND CONDITIONS GOVERNING MERZ PHARMA CANADA LTD.'S PURCHASE OF PRODUCTS/SERVICES**

**1. ENTIRE AGREEMENT; REJECTION OF OTHER TERMS.** This purchase order, these terms and conditions of purchase, and any supplemental terms and documents expressly referenced herein (collectively, the "PO") constitute the only contract and understanding between Merz Pharma Canada Ltd. and the supplier identified on the PO ("Supplier") for the goods, materials, products, and/or services ordered hereunder (hereinafter, collectively, "Product(s)"). Supplier acknowledges that no quote, proposal, invoice, shrink-wrap, click-wrap, other terms or conditions, or agreement provided with any Product shall be binding on Merz – even if use of such Product requires affirmative acceptance. If this PO constitutes an offer by Merz to purchase the Products at the price(s) and with the delivery date(s) specified herein, Supplier shall indicate its acceptance of this PO by verbal or written confirmation, by commencing work on this PO in any manner, or by delivery of the Products within the time for such delivery stated in this PO. Regardless of the manner or medium of acceptance time is of the essence. As an offer, this PO expressly limits acceptance to its terms and conditions, and notification of objection to any different or additional terms in any response to this offer from Supplier is hereby given. If this PO is construed as an acceptance of Supplier's offer, this acceptance is expressly conditioned on Supplier's assent to any additional or different terms contained in this PO. If this PO is construed as a confirmation of an existing contract, this PO constitutes the final, complete, and exclusive contract between the parties.

**2. CHANGES.** Merz may at any time direct in writing additions, deletions, or changes to all or any part of the scope of the PO, and Supplier agrees to perform such work as changed. If any such change causes an increase or decrease in the cost of or in the time required to perform such work, Supplier shall submit detailed information substantiating such claims. If required, an equitable adjustment shall be made to the price or time of performance, or both, and the PO shall be modified in writing accordingly. No modifications of the PO shall be valid unless expressly accepted in writing by Merz.

**3. QUANTITIES, PRICES, TAXES.** The specific quantity of Product ordered must be delivered in full. Any different quantity is subject to Merz's rejection and return at Supplier's expense, and Merz shall have no obligation to pay for any excess quantity. Product prices shall be the prices indicated on the face of this PO, and such prices shall not be increased without Merz's prior written consent. Any change in price or additional charges of any kind without Merz's prior written consent are hereby rejected. The prices on the face of the PO include all Federal, provincial, local or applicable foreign taxes imposed upon or on account of such sale, unless otherwise expressly indicated thereon.

**4. INVOICING AND PAYMENT.** Supplier shall issue an invoice to Merz on or at any time within thirty (30) calendar days after the completion of Product delivery, and only in accordance with the terms of this PO. Supplier shall submit invoice(s) to Merz through Merz's Ariba System or to [accountspayableCAN@merz.com](mailto:accountspayableCAN@merz.com) in accordance with Merz's instructions. Merz shall remit payment on the undisputed portions of such invoices within sixty (60) days from receipt of a properly prepared invoice. Invoice payment shall not constitute Product acceptance, and shall be subject to adjustment for errors, shortages, and/or defects in Products or other failure of Supplier to meet the requirements of this PO. If Merz disputes all or a portion of an invoice, Merz may withhold such disputed amounts, and will promptly notify Supplier of the amount and reason for the dispute. All invoices must include the PO number and a detailed description of the Products provided. Merz reserves the right not to pay any invoice issued more than 90 calendar days from the date originally required hereunder. Merz may set off any amount due from Supplier to Merz or any legal affiliate of Merz, whether or not under this PO, against any amount due Supplier hereunder.

**5. SHIPMENT.** Supplier shall comply with Merz's written shipping instructions. Unless otherwise expressly specified in the PO, the prices set forth herein include all charges for packing, hauling, storage, and transportation. Supplier shall be responsible for ensuring the proper packaging of Products, and, as applicable, inclusion of proper material data safety sheets and certificates of analysis, origin, and conformance. Supplier shall mark all containers with necessary handling and shipping information, and Supplier shall be responsible for damage resulting from improper packaging. Supplier agrees that in any case where freight regulations covering goods transported by common carrier establish a maximum limit on the carrier's liability for loss or damages suffered in transit, Supplier shall be liable to Merz for any excess of such maximum limit up to the full price of the Products.

**6. DELIVERY, TITLE, RISK OF LOSS.** Time is and shall remain of the essence for this PO, and no acts of Merz, including, without limitation, acceptance of late deliveries, shall constitute waiver of this provision. Supplier shall notify Merz in writing immediately of any actual or potential delay the timely performance of this PO. Title to and the risk of loss of Products purchased under this PO shall remain in Supplier and not transfer to Merz until the Products are delivered and unloaded at the F.O.B. point specified in the PO. Supplier shall indemnify, defend, and hold Merz harmless from and against any damages related to the transportation or handling the Products prior to the completion of unloading at Merz's facilities.

**7. INSPECTION.** Merz may inspect the Products before or within 90 days after receipt and reject them for failure to conform to this PO, regardless of whether any payment has been made by Merz, whether the nonconformity substantially impairs the value of the Products, or whether the nonconformity may be cured by Supplier. If Products tendered pursuant to this PO are nonconforming, Merz may return the Products to Supplier, at Supplier's expenses, for first-priority repair, replacement, or full refund, with any such remedy to be at Merz's election. Any costs of repair, rework, replacement, reperformance, inspection, transportation, repacking and/or reinspection by Merz shall be at Supplier's expense. Merz's failure to inspect does not relieve Supplier of any responsibility to perform according to the terms of this PO.

**8. WARRANTIES.** (A) Supplier warrants as follows: (i) the Products will be free from any latent or patent defects in materials, workmanship, and (where design is Supplier's responsibility) design, and are supplied to Merz in accordance with the specifications, drawings, and other written instructions provided with this PO; (ii) for Products which are or include services, that all such services shall be performed in a good and workmanlike manner, consistent with all applicable industry standards; (iii) if work is to be performed in whole or in part on Merz's premises, Supplier shall strictly comply with all of Merz's instructions and facility rules and policies; (iv) the Products will be new, unused, merchantable, safe for consumer use, and fit and sufficient for the use intended by Merz; (v) the Products will be free and clear of any lien, security interest, or other adverse claim against title; (vi) the Products will not be adulterated and will be labeled in full compliance with all applicable federal, provincial and local laws; (vii) the Products will not be



## TERMS AND CONDITIONS GOVERNING MERZ PHARMA CANADA LTD.'S PURCHASE OF PRODUCTS/SERVICES

an article which may not under applicable Federal, provincial or local laws, be lawfully sold or legally transported; (viii) the Products do not infringe upon any third party's intellectual property, including patents, copyrights, trademarks, or trade secrets, and Supplier has all necessary rights to sell or license the Products; (ix) any software or hardware provided under this PO does not contain any unauthorized code or other device (including but not limited to viruses, worms, time bombs, time locks, drop-dead devices, access codes, security keys, back doors, or trap door devices) that is designed to disrupt, disable, erase, harm, impede, or impair operation of the software or hardware or otherwise cause harm to any software, hardware or data; (x) neither Supplier, nor any parent, subsidiary, officer, director, employee, sub-supplier, third party agent or affiliate of Supplier (collectively "**Entities**"), are included on any of the restricted party lists maintained by the Canadian or U.S. Government or any other governmental or non-governmental entity, including, but not limited to (1) in Canada the Consolidated Canadian Autonomous Sanctions List, (2) in the U.S. the SDN List and Foreign Sanctions Evaders list administered by OFAC, Denied Parties List, Unverified List or Entity List maintained by BIS, the Excluded Parties List maintained by the GSA, the List of Excluded Individuals/Entities maintained by the HHS OIG, or the List of Statutorily Debarred Parties maintained by the U.S. State Department's DDTC, or (3) internationally, the consolidated list of asset freeze targets designated by the United Nations, European Union, and United Kingdom (collectively, "**Restricted Party Lists**"); (xi) Supplier shall immediately notify Merz if Supplier or any of its Entities becomes listed on any Restricted Party List.

(B) The foregoing warranties shall: (i) constitute conditions precedent under which Products must be supplied; (ii) are in addition to all other warranties, whether express or implied; (iii) survive any delivery, inspection, acceptance, or payment; and (iv) run to Merz and to Merz's customers. Merz's approval of material or designs furnished by Supplier shall not relieve Supplier of its obligations hereunder.

(C) If any Product fails to meet any of the warranties herein, Merz may, at its option: (i) require Supplier to correct, at no cost to Merz, any nonconforming Products via repair or replacement within seven (7) days of notice to Supplier; or (ii) return the nonconforming Products to Supplier at Supplier's expense and receive a full refund of the price paid; or (iii) correct the nonconforming Products itself and charge Supplier with the cost of such correction; or (iv) accept the nonconforming Products at a reduced price.

**9. CODE OF CONDUCT.** Supplier hereby agrees to abide by the principles of Merz's Third-Party Code of Conduct, which is available online at <https://www.merzusa.com/wp-content/uploads/MGCP-3PCOC-Merz-Global-Compliance-Policy-No.-15-Third-Party-Code-of-Conduct-v2.0-Aug2017.pdf>. Merz's Code of Conduct may be updated from time to time without notice; a copy of such updated Code will be available for review at the aforementioned website, and Supplier agrees to make reasonable efforts remain up-to-date on the Code.

**10. CONFIDENTIALITY.** Unless otherwise expressly agreed in writing: (i) all specifications, information, data, drawings, software, and other items supplied to Merz by Supplier shall be disclosed to Merz on a non-confidential basis and may be used by Merz without restriction in accordance with Article 11 hereof; and (ii) all specifications, information, data, drawings, software, and other items which are supplied to Supplier by Merz or obtained by Supplier and paid for by Merz in the performance of this PO, shall be maintained as confidential by Supplier, be used only for the purposes of providing the Products under this PO, and not be disclosed to any third party without Merz's express written consent. All such items supplied by Merz shall be promptly returned to Merz on request or upon cancellation or completion of this PO. Except as otherwise required by law, Supplier will not disclose the existence of this PO, nor any of its details or the existence of the relationship created by this PO, to any third party without Merz's prior written consent.

**11. INTELLECTUAL PROPERTY.** As between the parties to this PO, and except as otherwise expressly provided herein: (i) Merz's legal affiliate Ulthera, Inc. ("**Ulthera**") shall have the sole and exclusive ownership of any and all right, title, and interest in and to Work Product any and Merz Group Intellectual Property relating to the Ulthera® product line; (ii) Merz's legal affiliate Merz North America, Inc. shall have the sole and exclusive ownership of any and all right, title and interest in and to Work Product and Merz Group Intellectual Property relating to the Xeomin® aesthetic product, Radiesse®, Radiesse Plus®, Neocutis®, Prolaryn Gel® and Prolaryn Plus® and (ii) Merz's legal affiliate Merz Pharmaceuticals, LLC shall have the sole and exclusive ownership of any and all right, title and interest to Work Product and Merz Group Intellectual Property relating to the Cuvposa® product, and (iv) Merz shall have the sole and exclusive ownership of any and all right, title, and interest in and to all other Work Product and Merz Group Intellectual Property. As used in this Agreement: "**Work Product**" means any and all deliverables prepared or delivered by or on behalf of Supplier under this PO, including, without limitation, the Products and any data, reports, results, analyses, evaluations, conclusions, and other documents and materials; and "**Merz Group Intellectual Property**" means any and all inventions, discoveries, improvements, developments, ideas, know-how, trade secrets, technical and non-technical data, specifications, formulae, compounds, formulations, assays, methods, processes, practices, procedures, manufacturing techniques, designs, works of authorship, and other intellectual property of any kind, whether or not patentable or protectable by copyright, which are developed, conceived, or first reduced to practice in the course of Supplier's fulfillment of this PO, whether developed, conceived or first reduced to practice by one or more employees, agents, or subcontractors of Supplier and/or of Merz, separately or jointly, together with any documents and materials containing any of the foregoing, whether in written, electronic, graphic or any other form.

Supplier hereby assigns to Ulthera or Merz (as applicable) all right, title and interest in and to Work Product and Merz Group Intellectual Property. Upon Merz's request, Supplier shall execute and deliver (and shall cause its personnel to execute and deliver) to Merz any and all such assignments and other documents, and take such other actions, as Merz reasonably requests to confirm Ulthera's or Merz's exclusive ownership of the Work Product and Merz Group Intellectual Property, to seek and obtain patent or other intellectual property protection for the Work Product and Merz Group Intellectual Property, and/or to enforce, maintain and defend Ulthera's or Merz's rights in the Work Product and Merz Group Intellectual Property. Supplier shall not do anything to infringe upon or contest the validity of any intellectual property rights or other rights of Merz and/or Ulthera.

If, notwithstanding the provisions of this Article 11, it is determined by a court of competent jurisdiction that Supplier retains ownership rights in any materials delivered with or as part of the Products, or upon which the Work Product is based, then Supplier hereby grants to Merz an irrevocable,

## TERMS AND CONDITIONS GOVERNING MERZ PHARMA CANADA LTD.'S PURCHASE OF PRODUCTS/SERVICES

worldwide, non-exclusive, royalty-free, fully paid up, transferrable, sublicensable right and license to make, have made, modify, use, distribute, publicly perform or display, sell, offer to sell, and import such materials.

Supplier hereby warrants that it owns or has acquired rights in all such intellectual property necessary to grant the rights and licenses set forth in this Article.

**12. DATA PRIVACY AND SECURITY.** If in performance of this PO Supplier may collect, access, transfer, or use any personally identifiable information of any individual, Supplier agrees to inform Merz beforehand, and to enter into a data privacy and security agreement with Merz. Notwithstanding the foregoing and in all instances, Supplier will only collect, access, transfer, and use the minimum information necessary to enable Supplier to perform its obligations under this PO, and will do so only in accordance with Merz's written instructions or where disclosure is required by law. If disclosure is required by law Supplier shall report such requirement to Merz in sufficient time prior to any such disclosure as to allow Merz to take any protective action if it deems necessary. Supplier agrees to protect such information from loss, misuse, unauthorized access, disclosure, alteration, or destruction, and promptly notify Merz of any loss, misuse, unauthorized access, disclosure, alteration, or destruction of which Supplier becomes aware. Supplier further agrees that it shall not use, access, or disclose Merz Group Confidential Information in any manner that would constitute a violation of provincial or federal law, including without limitation, the federal Personal Information Protection and Electronic Documents Act (PIPEDA) and provincial health privacy laws. Supplier shall not transport or store Merz Group Confidential Information outside Canada except on prior written authorization by Merz. Supplier agrees all use, storage, and access to Merz Group Confidential Information shall be performed with that degree of skill, care, and judgment customarily accepted as sound, quality, and professional practices. Supplier shall implement and maintain commercially reasonable safeguards necessary to ensure the confidentiality and integrity of Merz Group Confidential Information.

**13. INJUNCTIVE RELIEF.** Supplier represents and warrants that each of its personnel shall abide by the provisions of Articles 9 through 12 of this PO, and that all such persons are and shall be obligated in writing to do so. Supplier acknowledges and agrees that any breach by Supplier or any of its personnel of any provision of Articles 9, 10, 11, and/or 12 would result in irreparable harm to Merz for which money damages would be an inadequate remedy, and therefore agrees that Merz shall be entitled to injunctive relief to prevent or restrain any breach or threatened breach of such provisions, in addition to any other remedies available at law or in equity.

**14. INDEMNIFICATION.** Supplier shall defend, indemnify and hold Merz, its affiliates, and their respective shareholders, officers, directors, employees, agents, successors, and assigns, harmless from and against any and all claims, suits, actions, liabilities, losses, costs, attorneys' fees, expenses, judgments and/or damages, whether ordinary, special, or consequential, arising directly or indirectly from or in connection with (i) the acts, negligence, omissions or willful misconduct of Supplier; (ii) Products supplied hereunder; (iii) a breach of any of Supplier's warranties or any other term and condition of this PO; (iv) a claim that any Products furnished hereunder infringe upon or misappropriate any patent, copyright, trademark, moral rights, trade secret, or other intellectual property or proprietary interest of another; or (v) a claim of any lien, security interest, or other encumbrance made by a third party; (vi) a violation of Federal or provincial law, regulation, statute, or ordinance; (vii) failure to comply with the confidentiality obligations set forth herein; or (viii) any loss or damage to persons (including death) or property, to the extent caused by any act or omission of Supplier or, where applicable, by its employees, agents, representatives, subcontractors or invitees. Without limiting Merz's rights and remedies hereunder, if Merz believes that the Products are likely to be determined to be an infringement or misappropriation of a patent, copyright, trademark, moral right, trade secret, or other proprietary right, Merz may require Supplier to replace such Products with products of equivalent functionality, or to modify such Products to make them non-infringing but possessing of equivalent functionality.

**15. INSURANCE.** Supplier shall maintain adequate insurance coverage, including, at a minimum, Workers Compensation and Employers Liability in statutory compliance with applicable provincial laws; General & Products Liability Insurance, indicating on the Certificate of Insurance the following coverages: Premises - Operations, Products & Completed Operations, Broad Form Contractual Liability, and Independent Contractor and Sub-Contractors and Automobile Liability Insurance. On Merz's request, Supplier shall furnish to Merz a Certificate of Insurance evidencing the foregoing coverages and limits. Additional insurances may be required in the event of services being performed on Merz's property, or where otherwise deemed by Merz to be warranted. Supplier hereby waives subrogation. All insurance specified herein shall: (i) contain a waiver of subrogation in favor of Merz, its affiliates, and their respective employees for all losses and damages covered by the insurances, including coverage for damage to Merz's property in Supplier's care, custody, or control; and (ii) where possible list Merz as an additional insured.

**16. LIMITATION OF MERZ'S LIABILITY.** IN NO EVENT SHALL MERZ BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR INDIRECT DAMAGES OR LOSSES (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF REVENUE, LOST BUSINESS OPPORTUNITY, OR COMMERCIAL LOSS), HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, REGARDLESS OF ANY FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY AVAILABLE UNDER THIS PO. ANY ACTION RESULTING FROM ANY BREACH ON THE PART OF MERZ RELATING TO THIS PO MUST BE COMMENCED WITHIN ONE YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED, OR IT SHALL BE DEEMED IRREVOCABLY WAIVED.

**17. DISPUTES, GOVERNING LAW, VENUE.** Any controversy or claim that may arise out of or in connection with this PO shall be submitted in writing to senior management representatives of the parties for resolution. If the parties' senior management representatives are unable after good faith efforts to settle the dispute to the mutual satisfaction of the parties within ten (10) business days after the dispute is submitted, either party may submit the dispute to a court of competent jurisdiction. To the extent permitted by applicable law, the parties waive any right they may have to a trial by jury. Notwithstanding the above, either party may seek injunctive or other equitable relief in any court of competent jurisdiction at any time. Pending resolution or settlement of any such dispute, Supplier will proceed diligently as directed by Merz with the performance of its obligations under this PO. This PO, all matters relating to this PO, and the parties' relationship with one another shall be governed by the laws of the Province of Ontario, without reference to conflict of law principles thereof. The parties hereby submit to the exclusive jurisdiction of, and venue in, the Ontario Courts, for any action or cause of action directly or indirectly related to this PO or the subject matter thereof. Each of the parties consents to the jurisdiction of such courts and to the

## TERMS AND CONDITIONS GOVERNING MERZ PHARMA CANADA LTD.'S PURCHASE OF PRODUCTS/SERVICES

making of service of process by certified mail return receipt requested, or by such other means as may be permitted under the rules of such courts. Each party agrees that it will not object to litigation in such courts on grounds of lack of venue, forum non convenienc e, or the like. The parties hereby exclude application of the United Nations Convention on Contracts for the International Sale of Goods.

**18. AUDIT RIGHTS.** For a period of one year after fulfillment of this PO, Merz shall have the right, upon five days' prior written notice, to audit, inspect, and copy the records related to the fulfillment of the PO, sufficient to enable Merz to verify that Merz has received the Products for which Merz has been billed. Under no circumstances does Merz have the right to audit Supplier's internal costs or accounts. This right may be exercised by any agent authorized by Merz. Merz shall bear the expense of any audit or examination unless such audit results in decrease of fees due Supplier by 5% of the total amount subject to the audit or \$10,000, whichever is greater, in which case Supplier shall pay the full cost of the audit. If any audit discloses a discrepancy in payment in favor of Merz, Supplier shall promptly refund any overpayment to Merz.

**19. INDEPENDENT CONTRACTOR.** Supplier is acting in the capacity of independent contractor, selecting, engaging, and discharging its employees and otherwise directing and controlling the fulfillment of this PO. Neither Supplier nor anyone employed by it shall represent, act as, purport to act as, or be deemed to be the agent, representative, or employee of Merz. Neither Merz nor anyone employed by it shall represent, act as, purport to act as, or be deemed to be the agent, representative, or employee of Supplier. Neither Merz nor Supplier have authority to make any statement, representation, or commitment of any kind on behalf of the other party, or to take any action binding upon the other party, without the other party's prior written authorization. Supplier shall be exclusively responsible for the payment of any and all contributions, taxes, and all similar obligations imposed by any Federal, provincial, local or foreign governmental authority with respect to wages, salaries, or other compensation paid by Supplier. No Supplier personnel are entitled to holidays, vacations, disability benefits, insurance, pensions, or retirement plans, or any other benefits offered or provided by Merz.

**20. RELEASE AGAINST LIENS/CLAIMS.** Supplier shall promptly pay all claims of persons or firms furnishing labor, equipment, or materials used in the fulfillment of this PO. Merz may require Supplier to submit satisfactory evidence of payment of all such claims. If there is any evidence of any such unpaid claim, Merz may withhold payment until Supplier has furnished such evidence of payment and release, and Supplier shall indemnify and defend Merz against any liability or loss arising from any such claim. Supplier agrees that no mechanic's lien shall be filed by it or by any subcontractor against any Merz property or improvements and, in any event, shall provide for the release thereof. Supplier shall do all things necessary to permit Merz to file and index, as and to the extent provided and permitted by law, an appropriate waiver of liens before Supplier commences any work under this PO. Where applicable law prohibits or fails to recognize waivers of liens, Supplier shall provide and execute a partial release of liens, and an affidavit of payment for debts and claims, and all other properly executed waivers or releases as typically provided in the province where the Products are delivered.

**21. TERMINATION.** Merz may at any time terminate this PO in whole or in part without cause immediately upon written notice to Supplier. Immediately upon notice of any such termination Supplier shall stop all work on this PO and cause its suppliers and subcontractors to stop work. Charges for any such termination of this PO shall be limited to actual non-recoverable costs incurred by Supplier that Supplier can demonstrate were properly incurred prior to the date of termination. In no event will Merz reimburse Supplier for goods, inventory, or services in excess of those required to meet Merz's delivery schedule and quantities. In no event shall such reimbursement include anticipated profits or revenue or other economic loss for undelivered Products. Merz may also terminate this PO immediately upon written notice if Supplier: (i) fails to deliver the Products within the time specified herein; or (ii) fails to replace or correct defective Product in accordance with the provisions of this PO; or (iii) fails to perform any other provision of this PO or so fails to make progress as to endanger performance in accordance with its terms; or (iv) becomes insolvent, files or has filed against it a petition in bankruptcy, or makes an assignment for the benefit of creditors. Any such termination shall not relieve Supplier from any other liability hereunder.

**22. FORCE MAJEURE.** Merz shall have the right to suspend any shipment from Supplier without penalty or liability to Merz in the event of war, riot, flood, acts of God, fire, court order, strike, work stoppage, act of governmental authority, epidemic, or other causes beyond Merz's control. Merz shall not be liable to Supplier for its failure to accept delivery of Product purchased hereunder if such failure arises from such above-mentioned causes.

**23. SURVIVAL.** Article 1; Article 3 (as to any outstanding orders); Article 4 (as to any outstanding payments); Articles 5, 6 and 7 (as to any outstanding shipments); Article 8; Articles 10 through 25; all quality-related provisions intended by their nature to survive; and all defined terms herein shall survive any expiration or early termination of this PO.

**24. ASSIGNABILITY AND SUBCONTRACTING.** This PO shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Notwithstanding the foregoing, neither this PO nor any interest therein shall be assigned, delegated, or otherwise transferred by Supplier except upon the prior written consent of Merz, and any assignment or transfer without such consent shall be void and of no effect. Supplier shall not appoint any subcontractor or non-employee to carry out its obligations under this PO without the prior written consent of Merz. In any event, even with Merz consent, Supplier shall remain liable for the performance of all such obligations and shall ensure that any permitted subcontractor or non-employee reads and abides by the terms of this PO. Merz may assign its rights or obligations under this PO to any Merz affiliate or successor without Supplier's consent.

**25. NOTICES, WAIVER, HEADINGS, SEVERABILITY, NONEXCLUSIVITY.** All notices, requests, demands, and other communications relating to this PO shall be directed to either party at the address indicated on the PO, or at such other address that either party may designate by ten (10) days advance written notice to the other party. All notices shall be in writing, and shall be sent by Canada Post regular mail, commercial overnight delivery service, or facsimile transmission. Merz's failure to enforce any rights under this PO shall not be construed as a waiver of such rights, nor shall Merz's waiver in one or more instances be construed as constituting a continuing waiver or as a waiver in other instances. If any one or more of the provisions of this PO is found by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained in this Agreement shall not in any way be affected or impaired by that finding or determination. The headings of

## TERMS AND CONDITIONS GOVERNING MERZ PHARMA CANADA LTD.'S PURCHASE OF PRODUCTS/SERVICES

the provisions of these terms and conditions are inserted for convenience only and shall not constitute a part hereof. Nothing herein shall limit Merz's right to, at all times, purchase any type of goods and services from other suppliers.

**QUALITY.** If there is a quality agreement in place between Merz and Supplier regarding the Products, such quality agreement shall be the primary governing document with respect to the quality-related aspects of the Products; otherwise, the following provisions are hereby expressly incorporated into this PO:

**I. QUALITY MANAGEMENT SYSTEM.** Supplier shall maintain a quality management system ("QMS") that monitors all aspects of the work performed under the PO. The QMS shall include, at a minimum, documented procedures to ensure the effective planning, operation, and control of its processes and regular internal audits to ensure compliance with its QMS and any other applicable requirements.

**II. NO SUPPLIER CHANGES.** Supplier shall not make any change to the Products without Merz's prior written consent. Upon approval by Merz of the initial design, any process changes, design changes, or deviations considered by Supplier must be submitted to Merz in writing for review. If changes are submitted for approval, the information submitted must include a complete description of the change and the effect the change will have on all characteristics of the Products. Upon request, Supplier shall submit samples of the Products for evaluation and approval by Merz.

**III. RECORDS.** Supplier shall keep complete records that provide evidence of conformity to all requirements of the QMS. Records shall be maintained in a manner that allows them to be readily retrievable and to prevent deterioration, damage, or loss. Electronic approval and storage of records is expected to comply with applicable Health Canada GMP requirements. Unless otherwise agreed with Merz, Supplier shall maintain records for 15 years from the date of manufacture of the relevant Product, or the time period required by applicable law - whichever is greater. Records shall be made available for inspection by Merz, its representatives, any relevant regulatory authority.

**IV. IDENTIFICATION AND TRACEABILITY.** Supplier shall maintain identification and traceability of raw materials, components, and Products during all stages of receipt, processing, test, storage, shipment, and distribution.

**V. CONTROL OF NON-CONFORMANCES.** Supplier shall have documented systems in place for the control of non-conforming Products at all stages of Supplier's operations, which systems include identification, documentation, evaluation, segregation, and, as applicable, rework or disposition of the nonconforming Product. In the event Supplier discovers a non-conformance that affects Products already shipped, Supplier shall promptly notify Merz and shall fully cooperate with all investigation and containment actions. Supplier shall reimburse all costs and expenses incurred by Merz in connection with use of nonconforming Product. Where a Product is identified by Merz as nonconforming, Merz may issue Supplier a CAPA, and Supplier shall complete all necessary CAPA activities within mutually agreed timeframes.

**VI. PROCESS CONTROL.** Supplier shall have documented systems in place for controlling the processes that affect Product quality and performance. Merz reserves the right to review and approve Supplier's qualification/validation plans and reports.

**VII. EQUIPMENT CONTROL, MAINTENANCE, CALIBRATION.** Supplier shall have documented systems in place to ensure process and test equipment is controlled, maintained, and calibrated at stated frequencies; suitable for its intended purpose; and capable of producing valid results. Product potentially impacted by use of out-of-calibration equipment shall be treated as nonconforming. Calibration standards shall be traceable to recognized national and/or international standards.

**VIII. CONTROL OF SUB-TIER SUPPLIERS.** Supplier shall maintain controls, commensurate with risk, for the quality of the Products which are the subject of this PO. Controls must include, as applicable, the flowdown of applicable Merz requirements and assurance of corrective action if sub-tier performance is not acceptable.

**IX. THIRD-PARTY INSPECTIONS.** Supplier agrees that Merz, as well as any government, notified body, commission, board, regulatory agency, court, or other instrumentality having any jurisdiction over all aspects of the design, manufacturing, and distribution of the Products ("**Authority**") shall have access to and the right to inspect or audit any pertinent Product manufacturing or quality processes and associated documentation or records. Supplier may specifically be subject to scheduled or unannounced audits per EU Recommendation 2013/473/EU. During unannounced audits, Supplier must allow the Authority to witness the testing of Product samples, and/or if requested, provide samples of Product for independent testing by the Authority. If issues or findings are identified during an audit that potentially impact Product quality, performance, or availability, Supplier shall promptly notify Merz and shall cooperate regarding communications with any other relevant Authorities.

**X. COMPLAINTS; REPORTING.** Supplier shall provide assistance and information requested by Merz in relation to the investigation of complaints Merz receives from its customers. Where the complaint is confirmed to be attributed to the Product provided, Supplier shall follow Merz's CAPA process. In the event that Supplier receives any information relating to suspected adverse events or reactions relating to any of Merz's products, Supplier agrees to report such information to Merz within 72 hours of becoming aware of such event, as follows: email: ProductSafetyCA@merz.com.

**XI. RECALLS.** Supplier shall promptly notify Merz in writing in the event a Product becomes subject to a Supplier- or Authority-initiated recall or field corrective action, and Supplier shall cooperate with Merz's requests for information related to such event. Merz has the sole authority for decisions related to any of its products in the field, including any field corrective action.

**XII. REGULATORY SUPPORT.** Upon request, Supplier shall provide information necessary for Merz to obtain regulatory approval for the marketing, sale, and distribution of Merz products into which Supplier's Products are incorporated. Such information may include specific details relating to raw materials, composition, ingredients, and other items.