

## TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF PRODUCTS FROM MERZ AESTHETICS CANADA

### 1. Agreement:

Customer's ("Customer's") signed Merz sales agreement, these terms and conditions, and the Product invoice(s) sent to Customer by constitute the entire binding agreement (collectively, the "Agreement") by and between Customer and Merz Pharma Canada, Ltd. ("Merz"; Customer and Merz, hereinafter, collectively, the "Parties") relating to Customer's purchase and use of Ulthera Systems and Transducers, Neocutis® products, Radiesse® products, Belotero® products, and Xeomin® Aesthetic products (such Merz products, hereinafter collectively, the "Products"). This Agreement supersedes all other agreements and understandings, whether written or oral, between the Parties relating to the purchase of the Products. Notwithstanding anything to the contrary, whether executing a purchase order, quotation, proposal, standing order, or letter of authorization, or by accepting delivery of the Products, Customer agrees to be bound by and accept the terms of this Agreement. No additions, conditions, amendments, or modifications by Customer or any other person, whether oral or contained in any other documents submitted from Customer to Merz, will be binding on Merz, regardless of Merz's failure to object or Merz's shipment of Products, unless otherwise agreed to in writing and signed by Merz. These terms and conditions may be updated or amended from time to time by Merz without notice to Customer; a copy of such updated terms will be available for Customer's review at <https://files.merzaesthetics.ca/customer-terms-and-conditions.pdf>. Customer agrees to be bound by the most recent terms as part of its Agreement. THIS AGREEMENT WILL APPLY UNLESS CUSTOMER HAS A SEPARATE WRITTEN AGREEMENT WITH MERZ THAT EXPRESSLY REPLACES THIS AGREEMENT.

### 2. Product-Specific Payment Terms:

**(A) Applicable to Ulthera System Purchases:** A non-refundable \$10,000 deposit is required to secure purchase of each Ulthera System. Full payment of the balance is due prior to receipt of the System unless the Parties have expressly agreed to a different payment schedule in writing.

**(B) Applicable to Transducer, Neocutis, Radiesse, Belotero, and Xeomin Aesthetic Purchases:** Payment in full is due upon receipt of the order unless the Parties have expressly agreed to a different payment schedule in writing. Customer hereby grants permission to Merz to charge Customer's credit card for any such order, including automatic Transducer orders.

**(C) Applicable to All Products:** All orders are subject to Merz's credit approval of Customer. Applicable sales tax will be invoiced unless Customer supplies a valid tax-exempt certificate prior to Product delivery. While packaged pricing may be quoted to Customer and/or displayed on Customer's sales agreement page, individual product pricing and applicable discounts will be listed on the subsequent Merz invoice(s) provided to Customer. Applicable shipping, handling, and other taxes will be added to the final invoice price for each order. Customer may specify a bill-to address which is different from Customer or a credit card which is different from Customer's own credit card, but Customer agrees that: (1) Customer is responsible for use and administration of the Product; and (2) Merz will hold Customer jointly and severally liable for all outstanding balances hereunder in the event that such bill-to third party is delinquent with payment(s) or in the event that any such credit card is declined. If Customer's account is delinquent by more than thirty (30) days, it shall accrue interest at the rate of 1.5% per month on the balance due or, if less, the maximum rate permitted by law. Merz reserves the right to discontinue Products without prior notice or modify future Product purchase prices without notice.

If Customer fails to fulfill the terms of payment or does not meet Merz's continuing credit requirements, Merz will have the option to do one or more of the following: (i) decline to accept orders or fulfill pending orders; (ii) require all pending and future orders to be on a prepaid basis; (iii) delay any shipment until payment is received by Merz or further assurances requested by Merz are received; (iv) declare all outstanding sums immediately due and payable; (v) require payment for all Products delivered hereunder to be made by irrevocable letter of credit in a form approved by Merz.

Nothing contained herein will release Customer from any previous obligations. Customer will be liable to Merz for all costs incurred by Merz in its collection of any amounts owing by Customer which are not paid when due, including collection agencies' and attorneys' fees and expenses, regardless of whether a lawsuit is commenced. From time to time, Merz may review Customer's creditworthiness. Customer agrees to provide Merz with all credit information reasonably requested, and Customer represents and warrants to Merz now, and each time Customer places an order, that all information Customer has provided is true and correct.

**(D) If Customer Is Receiving Third-Party Product(s):** If Customer's Agreement include third-party products (e.g., aesthetic lasers, radiofrequency microneedling devices, or other third-party products), Customer acknowledges and agrees as follows: Third-party products are purchases directly from, and sales directly by, the third-party seller. Customer is not purchasing such products from Merz. Customer's purchase, receipt, and use of the third-party products are subject to the applicable third-party seller's terms and conditions of sale. If applicable, the third-party seller will contact Customer to arrange for training on the third-party products. Merz makes no representations or warranties regarding any of the third-party products. No Merz Products have been cleared or approved for use in combination with any third-party products. Any and all third-party-product-related complaints or adverse event reports must be reported directly to the third-party seller. MERZ EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS WITH RESPECT TO ANY THIRD-PARTY PRODUCTS, AND MERZ SHALL HAVE NO LIABILITY TO CUSTOMER, ITS AFFILIATES, OR ITS END CUSTOMERS, OR TO ANY OTHER THIRD PARTY, FOR ANY ALLEGED OR ACTUAL DAMAGES, OR AS A RESULT OF ANY INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHT OF ANY THIRD PARTY, RELATING TO THE THIRD-PARTY PRODUCTS. Customer shall seek remedy solely from the applicable third-party seller with respect to any and all contract-related and product-related disputes relating to a third-party product.

### 3. Delivery and Risk of Loss; Lead Times:

Unless otherwise agreed in writing by Merz, all Product orders within Canada will be delivered FOB Merz's facilities. Upon Merz's tender of the Products to a common carrier, title and risk of loss shall pass to Customer, and delivery shall be deemed complete. Merz will make commercially reasonable efforts to fulfill the order by the quoted delivery date, but quoted delivery dates are estimates only. Merz may ship partial orders as needed. All shipments are fully insured for the benefit, and at the expense, of Customer.

#### 4. Inspection and Acceptance:

**(A) Applicable to All Products:** Orders may not be cancelled after shipment. In no event will promotional Product or expired Product be returnable or replaced by Merz. Shipping damage claims must be made by Customer directly with the shipping company in accordance with such company's policies, which generally require such claims to be made prior to the time the carrier of the Products leaves the delivery destination. In the event of loss or damage in transit Customer's payment obligations will not be affected, and Merz will act as Customer's agent in making any necessary insurance claim. No acts on the part of Merz, including, but not limited to, Merz's receipt of returned Products purchased by Customer, shall constitute Merz's approval and acceptance of the returned purchased Products or cancelled purchase order.

Customer must inspect delivered Products and report claims for defects, shortages, or receipt of wrong Products within the applicable timeframe set forth hereinbelow, or the Products will be deemed irrevocably accepted and such claims will be deemed waived. Customer shall communicate any such claims to Merz via telephone at Merz Canada Customer Service office: 1-877-336-4008 or email: [customerservicecan@merz.com](mailto:customerservicecan@merz.com); Technical Support: [technicalservice@merz.com](mailto:technicalservice@merz.com)

**(B) Applicable to Ulthera Products:** Delivered Products which have been purchased may not be returned. Customer must inspect delivered Products and report claims for defects, damages, shortages, or receipt of wrong Products which are discoverable on a visual inspection within 72 hours of delivery, or the purchased Products will be deemed irrevocably accepted and such claims will be deemed waived. For Ulthera Transducers, if, upon Merz's evaluation of the transducer support log Merz confirms that the transducer is in fact faulty, Merz will either ship Customer a replacement transducer at no cost to Customer or apply a line credit to Customer's account credit. Within thirty (30) business days of Merz's return acceptance Customer must return the faulty transducer to Merz in accordance with Merz's return instructions, or Customer will be re-billed for the list price of the transducer.

**(C) Applicable to Non-Ulthera Products:** Please refer to Merz's Return Materials Policy, available at [www.merzaesthetics.ca](http://www.merzaesthetics.ca) for information on whether or not the specific Product is returnable. If a Product is eligible for return and Merz approves the return, then, upon Customer's return of the Product, Customer's sole remedy and Merz's sole liability shall be replacement of the Product or credit at the original Product invoice price. Customer must inspect delivered Products and report claims for defects, shortages, or receipt of wrong Products within ten (10) business days of delivery, or the Products will be deemed irrevocably accepted and such claims will be deemed waived.

#### 5. Changes to Products:

Merz may change the design, construction, or composition of the Products. In the event a significant change occurs after Customer's order but prior to shipment, Merz shall notify Customer, and Customer shall be entitled to accept the changed Product, or to cancel this Agreement as to that Product only and receive a refund of any monies paid for that Product only. The foregoing shall be Customer's sole and exclusive remedy for any Product changes prior to delivery, and Merz shall have no other liability whatsoever for any such changes.

#### 6. Use and Transfer of Products:

**(A) Applicable to All Products:** Merz documents and tracks the Product(s) delivered to each Customer site. The Products, and any samples thereof which Merz may provide to Customer, are exclusively for Customer's professional use with (or, in the case of Neocutis, resale to) Customer's patients. Customer agrees that it shall not, directly or through any other parties, offer for sale or sell Products online.

Merz's name and logo; the Product images and descriptions; Merz's website designs; the look and feel of its websites; the text, graphics, button icons, images, audio clips, page headers, trademarks, and content; the selection and arrangement of any of the foregoing; and all related software belongs to or is licensed to Merz, and is protected by Canadian, US, and international laws, including laws governing copyrights and trademarks. Permission is granted to electronically copy and to print in hardcopy certain Product promotional materials made expressly available to Customer by Merz for Customer's use in marketing and selling Product to Customer's patients. Any other use of the materials without the prior written permission of Merz is strictly prohibited. Use of any such materials in any manner that is likely to cause confusion among customers or patients, or in any manner that disparages or discredits Merz, is also prohibited.

Customer acknowledges and agrees that the Products are covered by valuable intellectual property owned by or licensed to Merz, including one or more valid Canadian patents. Neither this Agreement nor Customer's purchase of Product shall be construed as a grant of any other rights in or to the intellectual property covering the Products. Customer's use of Products other than those purchased directly from Merz, or unauthorized sale/transfer/rental/leasing of Product(s), would cause immediate, material, and irreparable harm to Merz. **In the event of any violations of this Article, then, in addition to any other remedies available to Merz, (i) any Product-related limited warranties or service contracts in effect are automatically void, and Merz shall have no obligation to refund Customer the amounts paid for any service contracts; (ii) Merz may cancel or reduce the quantity of any current orders; (iii) Merz may refuse to sell future Products to Customer; and/or (iv) Merz may remove Customer from Merz's physician finder portal(s).**

#### **(B) Applicable to Non-Neocutis Products:**

Products must be administered under the direction of a physician or other healthcare professional authorized by provincial law, in accordance with the Instructions for Use and Customer's applicable provincial medical regulations. Merz prohibits the re-sale of Products. Sale or transfer of Products to third parties for uses unauthorized by Merz (e.g., refurbishment, modification, etc.) is also prohibited. Customer acknowledges that Products refurbished by or purchased from parties other than Merz are not Health Canada-cleared/approved, do not meet the strict manufacturing and quality controls of Merz, and may result in patient safety concerns. If Customer uses Products refurbished by or obtained from parties other than Merz, Customer assumes full liability for any adverse event that occurs. In addition, because it is unable to regulate the quality of such Products, Merz may be required to notify Health Canada of any known violations, as well as any individuals suspected of being involved in such practices.

#### 7. Ulthera System Training:

Purchase of an Ulthera System includes online LMS and three (3) days of instructor-led training (up to six hours per training day; limited to two Customer staff members per training day). All such complimentary training is subject to Merz guidelines, which include certain pre-training criteria which Customer must meet, as well as limitations on complimentary transducer use.

Customer may purchase additional initial or advanced Ulthera System training for \$1,250 per training day (up to six hours per training day; limited to two Customer staff members per training day), which fee must be paid in full prior to the training date unless otherwise agreed upon in writing by Merz. Customer is responsible for providing transducers for use during additional training sessions at its own expense.

## 8. Ulthera System Limited Warranty and Ulthera System Service Contract (Only Applicable if Customer has Purchased an Ulthera System); Ulthera Out-of-Warranty Service:

**(A) Limited Warranty Terms:** Merz hereby extends the following System-related warranty (hereinafter, the “**Limited Warranty**”) to Customer: the Ulthera control unit, the Ulthera hand piece, and the Ulthera power cord (hereinafter, the “**Equipment**”) shall be free from material defects and shall function in accordance with the written technical specifications and standards set forth in the Ulthera System User Manual (such specifications and standards, the “**Specifications**”). If during the Limited Warranty Term (as defined below) a piece of Equipment does not function in accordance with the Specifications, Merz will facilitate the repair or replacement of the non-functioning Equipment at no cost to Customer, which repair and replacement will include parts and labor and will cover applicable shipping charges.

The **Limited Warranty Term** for Customers who purchase an Ulthera System shall begin on the date that Customer purchases the System and shall be in effect for three (3) years.

**(B) Service Contract Terms (Only Applicable if Customer has Purchased a Separate Service Contract):** During the one-year period beginning upon the expiration of Customer’s Limited Warranty or beginning upon the expiration of Customer’s immediately-preceding Service Contract (the “**Service Contract Term**”), if any piece of Equipment ceases to function in accordance with the Specifications, then Merz will facilitate the repair or replacement of the nonfunctioning Equipment at no cost to Customer, which repair and replacement will include parts and labor and will cover applicable shipping charges. During the Service Contract Term, and upon Customer’s request, Merz may also examine, test, and recertify the Equipment. Alternatively, Customer may send a copy of their Ulthera System support log to Merz, and Merz will confirm whether or not the Equipment is functioning in accordance with the Specifications. The Service Contract applies only to Equipment provided with Ulthera Systems which are owned and operated in Canada.

**(C) Out-of-Warranty Service and Repairs:** If Customer purchases repair or maintenance services from Merz for Customer’s out-of-warranty Ulthera System, any such repair/maintenance services shall carry the following limited warranty: During the 90-day period beginning upon Merz’s return of Customer’s Ulthera System to Customer, if any piece of Equipment which was repaired/serviced by Merz immediately prior to such time ceases to function in accordance with the Specifications, then Merz will facilitate the repair or replacement of such nonfunctioning Equipment at no cost to Customer, which repair and replacement will include parts and labor and will cover applicable shipping charges.

**(D) Terms Applicable to Limited Warranty, Service Contract, and Out-of-Warranty Service:** If Merz is unable to resolve an Equipment defect remotely through phone or electronic troubleshooting, Merz will provide Customer with a loaner or replacement device to ensure continued operation at Customer’s site. Merz will cover shipping charges to and from the Customer’s site on the loaner device and on Customer’s inoperable Equipment. If a loaner is provided, upon completion of repair, Merz will redeliver the Equipment and arrange for pickup of the loaner device. Merz reserves the right to charge Customer list price for any loaner devices not returned in accordance with Merz’s instructions.

During the applicable warranty term, Merz will provide Customer with any Software updates or upgrades which are offered generally to all Ulthera customers free of charge and which enhance Ulthera System functionality or allow

access to new, Health Canada-cleared procedures. The foregoing does not include any Ulthera System upgrades to diagnostic-quality imaging which would require a separate transducer. Customer must install all Software updates and upgrades provided to Customer during the applicable warranty term.

The warranties set forth in Sections 8(A)-(C) are personal to Customer and are nontransferable. The System must be operated at all times in accordance with the Specifications. Customer must notify Merz of any defect or non-functionality covered under the applicable warranty period within seventy-two (72) hours of the event in order for the event to be eligible for coverage. Nothing in this Article 8 covers damage to Equipment resulting from misuse, abuse, accident, or other use not strictly in accordance with the Specifications. The System is comprised of integrated pieces of sensitive, calibrated, electronic, plastic and metal parts and can be easily damaged if not handled carefully. Physical damage of the probe receptacle (latch), handpiece (right/left), control unit shell, and/or display assembly is considered Customer damage/abuse and is excluded from coverage. Damage resulting from any part of the System coming in contact with foreign substances or foreign objects is also considered Customer damage/ abuse and is excluded from coverage. The foregoing are for illustration only and are not meant as an exhaustive list of events that would not be covered under the Merz warranties.

Merz is the only authorized service provider for the Equipment. Due to safety and quality concerns, Merz prohibits the repair of any Equipment by an unauthorized service provider. Use of an unauthorized service provider will immediately void any and all warranties or service contracts in effect.

## 9. Limited Ulthera System Software License:

If Customer purchases an Ulthera System, then, in consideration for Customer’s full payment of the Ulthera System purchase price and compliance with all applicable terms and conditions in this Agreement, Merz hereby grants Customer a nonexclusive, nontransferable, revocable personal license to use the Ulthera System software (“**Software**”) according to the terms set forth herein.

The Software may only be used by Customer in its practice for administration of Ultherapy. Use by third parties is not permitted without written authorization from Merz. Customer agrees not to: (i) use, promote, advertise, market, publish, transfer, distribute, rent, license, sell, copy, modify, create derivative works from, or use in a timesharing arrangement, the Software, or any copy thereof, in whole or in part, except as expressly provided in this Agreement; (ii) reverse engineer, disassemble, decompile, translate, modify, violate, circumvent or otherwise tamper with the Software, or otherwise attempt to derive the source code of any of the Software’s software; (iii) develop, distribute or sell applications that are capable of launching, being launched from, or are otherwise integrated with, the Software. Customer acknowledges and agrees that the Software is the proprietary property of Merz and/or its affiliates and is protected under copyright and/or patent law in Canada, the US, and other countries. Customer further acknowledges and agrees that all right, title, and interest in and to the Software, including intellectual property rights associated therewith, are and shall remain with Merz and/or its affiliates. This Agreement does not convey to Customer an interest in or to the Software, but only a limited right of use in accordance with the terms of this Agreement, which right may be revoked by Merz in its sole discretion if Customer violates any of the terms hereof.



#### 10. Reporting; Technical Complaints Handling:

Customer will maintain adequate tracking for the Products to enable Merz to meet regulatory authorities' product tracking and reporting requirements. Customer agrees to notify Merz within 24 hours of the occurrence of any event or reaction that: (i) reasonably suggests that a Product has or may have caused or contributed to a death or serious injury; (ii) may have resulted from Product-related failure; malfunction; improper or inadequate design, manufacture, composition, or labeling; or user error; (iii) is an unexpected outcome beyond the applicable Product's label (including lack of effect or extended effect).

To report suspected adverse events or reactions, contact Merz as per below, and/or contact Health Canada at +1 866-234-2345 or [www.healthcanada.gc.ca/medeffect](http://www.healthcanada.gc.ca/medeffect); Email: [product.irregularities@merz.com](mailto:product.irregularities@merz.com); toll-free adverse event phone line for physicians: +1 866-815-8715.

Customer will cooperate fully with Merz in dealing with end customer technical complaints concerning the Products and will take such action to resolve such complaints as deemed necessary or appropriate by Customer or as may be otherwise reasonably requested by Merz. Customer agrees to report to Merz any technical complaint regarding a Product of which Customer becomes aware within 24 hours of becoming aware. Customer agrees to assist Merz to facilitate the resolution of such complaints. For purposes of this Agreement, a technical complaint can be the receipt of any: (i) Product(s) quality claims, medical claims, or complaints or other written claims or complaints; or (ii) written communication from any applicable regulatory agency pertaining to a Product.

To report a Product-related technical complaint, contact Merz at: +1 866-815-8715 or [productsafetyCA@merz.com](mailto:productsafetyCA@merz.com).

#### 11. Traceability:

Customer will create and maintain accurate records of all activities and events related to the Products to the extent necessary to ensure Product traceability. The records will be constructed in such a manner that all significant activities or events will be traceable for a period of not less than 15 years past the date of manufacture. Such records must be clear, readily available, and include each order received and accepted, the serial or lot number and expiration date of the Product(s), and the address where Product(s) are delivered.

#### 12. Personal Health Information:

Customer shall not disclose any Personal Health Information to Merz. Prior to Merz regaining possession of Customer's Ulthera System, if applicable, whether by event of default, for repair or servicing, or otherwise, Customer shall purge and/or remove any and all Personal Health Information from the equipment and ensure that the transfer of the equipment back to Merz does not result in a disclosure of any Personal Health Information. "Personal Health Information" has the meaning set forth in the federal Personal Information Protection and Electronic Documents Act (S.C. 2000, c.5).

#### 13. Risk of Use:

Customer represents to Merz that the Products will be used in accordance with all applicable federal, provincial, territorial or municipal laws, including those applicable to physicians and other health care professionals, in the province or territory where the Products will be used. The Products shall only be used in accordance with their authorized labelling and in accordance with any additional instructions provided by Merz from time to time. Merz shall not be responsible for any risks or liabilities, known or unknown, connected in any way with the use of the Products by Customer, its employees or agents, or connected with the sterilization, storage, handling, application, operation, installation, assembly, maintenance, repair or disposition of the Products, and all such risks and liabilities shall be entirely assumed by Customer. It shall be the exclusive responsibility of

Customer to ensure the suitability of a Product before each use and to ensure that the Products are only used by qualified personnel in a reasonable and professional manner and in conformance with current knowledge and standards.

#### 14. Anti-Kickback Statute:

It is the intent of Customer and Merz to comply with the Anti-Kickback Statute (42 U.S.C. §1320a-7b(b)) and the Discount Safe Harbor and Warranties Safe Harbor regulations set forth in 42 C.F.R. 1001.952(h) and (g), respectively. Customer's price may constitute a 'discount or other reduction in price' under the Anti-Kickback Statute. Merz will provide Customer with invoices that fully and accurately disclose the discounted price of all Products purchased under this Agreement to allow Customer to comply with the Discount Safe Harbor regulations, including sufficient information to enable it to accurately report its actual cost for all Product purchases. Customer represents, warrants, and covenants that it will not make any claim for reimbursement to any government or private third-party payer for the Products or any administration of such Products to Customer's patients. Customer acknowledges, however, that, if applicable, it will fully and accurately report all discounts or other price reductions, including warranty items, in the costs claimed or charges made under any Federal or State healthcare program and provide information upon request to third-party reimbursement programs. Customer will be solely responsible for determining whether any savings or discount or warranty item it receives must be reported to payors.

#### 15. Foreign Corrupt Practices Act:

Customer will comply with all applicable anticorruption, anti-bribery, and anti-kickback laws, rules, and regulations, including, without limitation, the United States Foreign Corrupt Practices Act (15 U.S.C. §78dd-1, et seq.) and other laws, rules, and regulations applicable to where Customer conducts business.

#### 16. Disclaimer; Limitation of Liabilities:

EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE PRODUCTS ARE PROVIDED TO CUSTOMER "AS IS", WITHOUT ANY WARRANTIES OF ANY KIND. MERZ EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. MERZ SHALL HAVE NO LIABILITY TO CUSTOMER, ITS AFFILIATES, OR ITS END CUSTOMERS, OR TO ANY OTHER THIRD PARTY, FOR ANY DAMAGES, INCLUDING DAMAGES RESULTING OR ALLEGED TO RESULT FROM ANY DEFECT, ERROR, OR OMISSION IN THE PRODUCTS, OR AS A RESULT OF ANY INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHT OF ANY THIRD PARTY. UNDER NO CIRCUMSTANCES WILL MERZ HAVE ANY LIABILITY TO CUSTOMER FOR, AND CUSTOMER HEREBY EXPRESSLY WAIVES, ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES OF ANY DESCRIPTION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER ARISING OUT OF WARRANTY OR CONTRACT, NEGLIGENCE OR OTHER TORT, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, FORESEEABLE BUSINESS LOSSES, LOSS OF PROFITS, AND RELIANCE DAMAGES. CUSTOMER AGREES THAT UNDER NO CIRCUMSTANCES WILL MERZ'S LIABILITY UNDER THIS AGREEMENT FOR ANY CAUSE EXCEED THE PURCHASE PRICE PAID BY CUSTOMER FOR THE PARTICULAR PRODUCT(S) INVOLVED. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, THE REMEDIES SET FORTH IN THIS AGREEMENT WILL APPLY EVEN IF SUCH REMEDIES FAIL THEIR ESSENTIAL PURPOSE.

## 17. Indemnity:

To the fullest extent permitted by law, Customer agrees to indemnify, defend, and hold harmless Merz, including Merz's affiliates and their officers, directors, agents, employees, successors, and assigns, from and against any claim, demand, cause of action, debt, liability, loss, fine, damage, or expense (including reasonable attorneys' or legal fees, expenses, and court costs) (collectively, "Liabilities") that relate to Customer's: (i) use of any third-party-refurbished or modified Product or any counterfeits of Products; (ii) modification of or addition to any Product(s); (iii) breach of this Agreement; (iv) gross negligence or willful misconduct; or (v) failure to abide by all applicable laws, rules, regulations, and orders that affect the Products.

## 18. Essential Basis of the Bargain:

Customer acknowledges that Merz has set its Product prices and entered into the Agreement in reliance upon the limitations and exclusions of liability, the disclaimers of warranties, and Customer's indemnity obligations set forth herein, that the same form an essential basis of the bargain between the Parties, and THAT THE CONSIDERATION WOULD BE HIGHER IF MERZ WERE REQUIRED TO BEAR LIABILITY IN EXCESS OF THAT STATED HEREIN.

## 19. Financing and Assignment:

This Agreement binds Customer, regardless of any financing arrangements, subrogations or assumptions. Customer acknowledges that Merz may have a contractual relationship with one or more thirdparty financing companies, wherein such companies have agreed that to offer financing to Product customers if they meet certain financial criteria. Customer further acknowledges that Merz is not a party to any resulting financing agreements which Customer may enter with any third-party financing company.

Customer may not assign its rights or delegate its obligations hereunder except with the prior written consent of Merz (which may be withheld in its sole discretion). Merz may subcontract the performance of any obligation of Merz under the Agreement, and Merz may assign any right or obligation under the Agreement, to an affiliated party of Merz.

## 20. Independent Contractors:

No provision of this Agreement will be deemed to create a partnership, joint venture, or other combination between Merz and Customer. Customer and Merz are independent contractors. Neither Party will make any warranties or representations or assume any obligations on the other Party's behalf. Neither Party is or will claim to be a legal representative, partner, agent, or employee of the other Party. Each Party is responsible for the direction and compensation, and is liable for the actions of, its own employees and subcontractors.

## 21. Amendments:

The Agreement may not be amended, altered or modified except in writing by an authorized signatory of Merz. No other purported additions, amendments, alterations or modifications by Customer or any other person, whether oral or written, shall be binding on Merz, regardless of Merz's failure to object or Merz's shipment of Products. In the event of a conflict between these terms and conditions and any other part of this Agreement, these terms and conditions shall govern.

## 22. Governing Law and Venue; Class Action Waiver:

This Agreement and all disputes and matters relating hereto shall be construed in accordance with the laws of the province of Ontario without giving effect to its conflicts of laws rules. Customer hereby consents to the jurisdiction and venue of the courts of Ontario, and hereby waives any objections based on inconvenient forum or conflicts of laws principles. The provisions of this Agreement are divisible and the invalidity or unenforceability of any provision or provisions contained herein shall not in any way affect the validity of this Agreement without the invalid or unenforceable provision or provision.

Where permitted under the applicable law, Customer and Merz agree that each may bring claims against the other only in each Party's individual capacity and not as a plaintiff or class member in any purported class or representative action. Unless Customer and Merz both agree, no action, or court of law, may consolidate more than one person's claims or otherwise preside over any form of a representative or class proceeding. Per Article 23, this paragraph shall be deemed stricken in the event that it is illegal or unenforceable under applicable law.

## 23. Severability:

If any provision of this Agreement shall be determined to be illegal or unenforceable by any court of law in any jurisdiction, the remaining provisions hereof and thereof shall be severable and enforceable in accordance with their terms, and all provisions shall remain enforceable in any other jurisdiction.

## 24. Survival:

Article 1; Article 2; Articles 4 through 6; Articles 8(A)-(C) in accordance with the time periods set forth therein; Article 8(D); the second paragraph of Article 9; Articles 10 through 25; and all defined terms in this Agreement shall survive any expiration or early termination of this Agreement.

## 25. Entire Agreement:

Customer and Merz acknowledge that there have been no warranties, representations, covenants or understandings made by either Party to the other, except such as are expressly set forth in the Agreement. **Without limiting the foregoing, Customer acknowledges and agrees on behalf of him/herself individually and on behalf of the Customer entity, that, in entering into this Agreement and this transaction: (1) it has relied solely on the terms and conditions of this Agreement; and (2) it has not relied on any oral or written statements by Merz sales representatives, other Merz personnel, or third parties (including, but not limited to, third-party financing companies), or on any statements included in any of Merz's written or electronic promotional materials (including its web sites). In particular, Customer acknowledges that Merz makes no representations or warranties regarding Customer's authority to administer the Products in the province(s) in which Customer operates; on the contrary, Merz is relying on Customer's representation that Customer is properly licensed and authorized to administer the Products. This Agreement constitutes the entire understanding and obligation of Customer and Merz with respect to the subject matter of this Agreement and supersedes any prior agreements or understandings, whether oral or written.**