

**VaxServe, Inc.**  
**Terms and Conditions of Sale**  
**2019**

**ARBITRATION**

- All Claims and disputes arising under or relating to this Agreement are to be exclusively and finally determined by binding arbitration in the state of New York, or another location mutually agreeable to the parties, there shall be no right or authority for any Claims to be arbitrated on a class action basis, and there shall be no entitlement to join or consolidate Claims. The arbitration shall be conducted on a confidential basis pursuant to the Commercial Arbitration Rules of the American Arbitration Association, or if applicable, under its Procedures for Large, Complex Commercial Disputes. Any decision or award as a result of any such arbitration proceeding shall be in writing and shall provide an explanation for all conclusions of law and fact and shall include the assessment of costs, expenses, and reasonable attorneys' fees. Any such arbitration shall be conducted by an arbitrator experienced in areas of law applicable to the asserted Claims, and shall include a written record of the arbitration hearing. The parties reserve the right to object to any individual who shall be or has been at any time employed by or affiliated with a competing organization or entity. An award of arbitration may be confirmed in a court of competent jurisdiction. This arbitration shall be governed by, and construed in accordance with, the laws of the state of New York without giving effect to the choice of law principles thereof.
- Definition of Claims. As used herein, "Claims" shall mean any and all liabilities, disputes and expenses whatsoever including, without limitation, Claims, adversary proceedings (whether before a court, administrative agency or any other tribunal), damages (whether compensatory, multiple, exemplary or punitive), judgments, awards, penalties, settlements, investigations, costs, responses to subpoenas or other governmental directives and reasonable attorneys' fees and disbursements with respect to any claims that may be sustained, suffered or incurred by a Party hereto.

**APPLICABLE LAW**

- This Agreement shall be deemed to have been executed and delivered in Moosic, Pennsylvania. Except as otherwise provided herein, this agreement and all rights and obligations hereunder, including matters of construction, validity, and performance, shall be governed by the internal laws of the Commonwealth of Pennsylvania, including the Uniform Commercial Code as enacted in that jurisdiction, without giving effect to the principles of conflicts of law thereof.
- The jurisdiction and venue of any legal proceedings for the resolution of disputes arising under or in connection with this agreement shall be in the federal or state courts of the Commonwealth of Pennsylvania. In any suit by VaxServe for nonpayment or breach of contract, VaxServe shall be entitled to recover all costs of suit, including reasonable attorneys' fees and an interest fee of the lesser of 1.5% per month or the maximum permissible rate.
- In the event that any one or more of these Terms and Conditions of Sale is held invalid, illegal, or unenforceable, such provision or provisions shall be severed and the remaining Terms and Conditions of Sale shall remain binding and effective.
- Waiver by VaxServe of any breach of these Terms and Conditions of Sale shall not be construed as a waiver of any other breach, and failure to exercise any right arising from any default hereunder shall not be deemed a waiver of such right which may be exercised at any subsequent time.

## **CUSTOMER ELIGIBILITY**

- The following Customers are eligible to purchase vaccine and other products directly from VaxServe, including but not limited to licensed wholesalers and physician distributors (collectively hereinafter “distributors”); state and local government entities; physicians and nurse practitioners in private practice; hospitals, clinics and contract Customers, long-term care facilities, pharmacies, and third-party billing companies.

## **CLAIMS FOR LOSS OR DAMAGE IN SHIPMENTS**

- Claims for loss, shortage, breakage, leakage, or other damage occurring in transit must be submitted to VaxServe within 10 days from date of invoice, for replacement or credit of affected product(s), which includes but is not limited to vaccines, in accordance with the Merchandise for Return section. The sole and exclusive remedy of Customer is credit or replacement, as applicable, of affected product(s); Customer agrees that no other remedy (including, but not limited to, incidental, consequential, or other damages of any kind) shall be available. Loss, shortage, breakage, leakage, or other damage claims must also be accompanied by freight bill with notation by the carrier of the loss, shortage, breakage or damage, or accompanied by the carrier’s concealed loss or damage report where the loss is of a concealed nature. Where loss, shortage, breakage, leakage, or other damage has occurred in transit, Customer agrees to cooperate fully with VaxServe in VaxServe’s effort to establish a claim against the transportation company. Claims submitted without appropriate documentation will be denied.

## **CORRESPONDENCE**

- All communication relative to order fulfillment should be directed to your VaxServe Representative, at 1-800-752-9338, Monday through Friday, between 8 AM and 8 PM Eastern Time, or log onto [www.vaxserve.com](http://www.vaxserve.com) at any time.

## **CUSTOMER CLAIMS**

- All Claims involving discounts, pricing, credits, or returns must be reported to VaxServe within 6 (six) months of the date of invoice for the purchase in question. Inappropriate deductions taken from Customer payments, including but not limited to those made after this deadline, will be reflected against the account and could jeopardize future shipments on open terms. (Claims concerning chargebacks or for loss, shortage, leakage, breakage, or other damage occurring in transit are covered elsewhere in these Terms and Conditions of Sale and are excluded from this provision).

## **CUSTOMER REPORTS**

- Customer shall comply with all applicable federal and state laws, rules, and regulations. As part of the cost reporting process or otherwise, Customer may be obligated to report and provide information concerning any discounts or rebates provided by VaxServe pursuant to 42 U.S.C. §1320a-7b(b)(3)(A) and/ or 42 C.F.R. § 1001.952(h)(1), other federal or state laws, or agreements with third-party payers.

## **CONTRACT CUSTOMERS**

- In the event that Customer has entered into a written contract with VaxServe, and in the event any of the Terms and Conditions of Sale set forth herein conflict with those contained in such contract, the Terms and Conditions of Sale of the contract shall prevail.

## **DATED PRODUCTS**

- Products listed in the VaxServe Catalog or supplemental price lists and materials may carry an expiration date. Products are not to be used after the expiration date printed on the product label.

## **FORCE MAJEURE**

- VaxServe shall not be liable for delays in shipment, reductions of shipment amounts, or default in delivery for any cause beyond its reasonable control including, but not limited to (a) an actual or potential national shortage of any product(s); (b) actions by federal, state, or local governmental agencies, units, bodies, or officials relating to an actual or potential national shortage of any product(s), including but not limited to orders, guidelines, recommendations, or requests to limit, alter or change vaccine sales or distribution, or to limit the persons who should be vaccinated; (c) government action (to the extent such action is not covered by the preceding subparagraph), public health emergencies, influenza pandemic, war, riots, civil commotion, embargoes, acts of terrorism, or martial laws; (d) VaxServe's inability to obtain necessary materials from its usual sources of supply; (e) shortage of labor, raw material, production or transportation facilities, or other delays in transit; (f) labor difficulty involving employees of VaxServe or others; (g) fire, flood, or other casualty; or (h) other contingencies of manufacturer or shipment. In the event of any delay in VaxServe's performance due in whole or in part to any cause beyond its reasonable control, VaxServe shall have such additional time for performance as may be reasonably necessary under the circumstances. If by reason of any such force majeure event, the quantities of any product(s), or any other materials used in the production thereof, reasonably available to VaxServe shall be less than its total needs to fulfill orders or reservations for product(s), VaxServe may allocate its available supply of any such product(s) among its existing or prospective buyers and/or its affiliates in such manner as VaxServe deems proper, without thereby incurring liability for failure to perform under any applicable agreement.

## **FORMULAE**

- The formulae shown in the VaxServe Catalog are those in use at the time of publication. The right is reserved to make changes without notice whenever advances in medical science or therapeutic knowledge justify such action. Such changes and those made necessary by revisions of the U.S.P. /N.F. standards make it necessary that Customers be cautioned to rely upon the label statements appearing upon the package rather than the VaxServe Catalog information.

## **LIMITATION OF REMEDIES**

- VaxServe shall not be liable for incidental or consequential losses, damages, or expenses, directly or indirectly arising from the sale, handling, or use of the goods, or from any other cause with respect to the product(s) or this Agreement, whether such Claim is based upon breach of contract, breach of warranty, negligence, strict liability in tort, negligence, or any other legal theory.

## **MERCHANDISE FOR RETURN**

- All purchases of Fluzone<sup>®</sup> Influenza Vaccines; Flublok<sup>®</sup> Quadrivalent (Influenza Vaccine); Imogam<sup>®</sup> Rabies-HT, Rabies Immune Globulin (Human) USP, Heat Treated; IXIARO<sup>®</sup> (Japanese Encephalitis Vaccine, Inactivated, Adsorbed); and RABAVERT<sup>®</sup> Rabies Vaccine are NON-RETURNABLE. VaxServe reserves the right to designate additional specific products or product configurations as non-returnable for exchange or credit.
- All returns must comply with federal and state laws and regulations. In accordance with our manufacturing partners' policies, VaxServe will accept returns that are unopened and have reached expiration. Expired product may be returned for replacement or credit at the discretion of VaxServe. VaxServe does not accept returns unless an error has occurred on the part of VaxServe or the carrier company. In the event that an error has occurred on the part of VaxServe, returns will be handled on a case-by-case basis. All returns are shipped prepaid by VaxServe. Collect shipments will not be accepted. All expired products must be shipped prepaid to Sanofi Pasteur c/o Inmar, Inc. 4332 Empire Road, South Dock, Fort Worth, TX 76155.

All returns must have a Return Authorization form completed on the Inmar portal at <https://returns.healthcare.inmar.com>. Please contact your VaxServe Representative at 1-800-752-9338 to obtain your authorization and instructions on the return procedure. Unauthorized returns may be refused. Products returned to VaxServe may be destroyed or returned to the manufacturer.

- Further, VaxServe shall not be responsible for, and shall not accept returns of, product adversely affected by force majeure conditions, including but not limited to power outages, flood, or other utility- or weather-related occurrences.
- Product(s) not purchased directly from VaxServe should be returned to the site of purchase under their terms of sales.
- VaxServe representatives are not permitted to deliver or pick up product(s) from Customer for return. They are willing to offer information about the return policy; however, the ultimate decision and the responsibility for selecting the items and making the return rest with the Customer.

## ORDERS

- To order or learn more about special offers, please contact a VaxServe Representative, at 1-800-752-9338, Monday through Friday, between 8 AM and 8 PM Eastern Time, or log onto [www.vaxserve.com](http://www.vaxserve.com) at any time.
- Title to merchandise sold will pass to Customer upon delivery at Customer's destination. All shipments are made by common carrier and additional charges apply for specially requested overnight shipments. Additional charges may apply for products that require unique shipment accommodations or are shipped directly from the manufacturer.
- All orders are subject to acceptance by VaxServe. VaxServe reserves the right to reduce, defer, back order, or not accept such orders.
- Should the Customer have a question regarding Customer shipment, please contact a VaxServe Representative, at 1-800-752-9338, Monday through Friday, between 8 AM and 8 PM Eastern Time.
- Entire Agreement: Acceptance of orders, whether oral or written, is based on the express condition that Customer agrees to all of the Terms and Conditions of Sale contained herein. Acceptance of delivery by Customer will constitute Buyer's consent to these Terms and Conditions of Sale. These Terms and Conditions of Sale, together with any terms on the face side hereof (or in any document executed simultaneously by VaxServe and Customer), represent the complete Agreement of the parties and no terms or conditions in any way adding to, modifying, or otherwise changing the provisions stated herein, including by custom, usage of trade or course of dealing or approved by an officer of VaxServe. No modification of any of these terms will be effected by VaxServe's shipment of goods following receipt of Customer's purchase order, shipping request, or similar forms containing printed Terms and Conditions of Sale conflicting or inconsistent with the terms herein.

## UNIFY™

- Customers who use the Unify System, VaxServe.com and VaccineShopper.com® ("Systems") agree to use the Systems in a commercially reasonable manner and in compliance with all applicable laws. Customers agree that they have taken all reasonable steps to ensure computers accessing the Systems are free from viruses or other malicious code that may harm the Systems. Customers further agree to appropriately protect their login credentials and acknowledge that only the applicable user or users that are authorized to access the Systems will be given the passwords needed to log into the System. Customers agree that any user not

directly authorized to use the Systems will be actively supervised and monitored by a representative of such Customer who is authorized to use the Systems, but in no event will customer allow someone who is not legally allowed to access Systems to use the Systems, even if supervised.

- VaxServe agrees to use commercially reasonable efforts to ensure the uptime of the Systems, but provides no guarantees as to any specific uptime metric.
- Customer agrees that VaxServe may collect and monitor all usage of the Systems, and may use that information in any manner consistent with this Agreement.

## **OUR GUARANTY**

- VaxServe guarantees that any product(s) comprising any shipment or other delivery made by VaxServe shall not be, at the time of such shipment or delivery, adulterated or misbranded within the meaning of the Federal Food, Drug, and Cosmetic Act, as amended and in effect at the time of said shipment or delivery (the "Act"), or within the meaning of any applicable state or local law in which the definitions of adulteration or misbranding are substantially the same as those contained in the Act; and such merchandise is not, at the time of such shipment or delivery, merchandise which may not be introduced into interstate commerce under the provisions of sections 404 or 505 of the Act; and such merchandise is merchandise which may be legally transported or sold under the provisions of any other applicable federal, state, or local laws, rules, or regulations. Notwithstanding the foregoing, no guarantee is made with respect to merchandise which becomes adulterated or misbranded within the meaning of the Act by reason of causes beyond the control of VaxServe.
- THE WARRANTIES DESCRIBED IN THIS SECTION AND IN VAXSERVE'S TERMS AND CONDITIONS OF SALE ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY VAXSERVE REGARDING PRODUCTS SOLD HEREUNDER. ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED.

## **PAYMENT TERMS**

- Unless otherwise stated, invoices should be paid in full within 30 days (or at contract terms, if applicable) of the invoice date. VaxServe reserves the right to charge a fee of the lesser of 1.5% per month or the maximum permissible rate if payment is not received within terms.
- Customers who have prepayment status are required to make payment prior to their order being processed.
- Federal Excise Tax is not subject to any discounts. Payment may be sent to the remittance address indicated on the invoice. Payment by check is recognized when received at the lock-box address indicated on the invoice. MasterCard®, VISA®, Discover® and American Express®, Electronic Check Payment at [www.vaxserve.com](http://www.vaxserve.com) and check by phone are accepted as payment for purchases. All accounts shall be paid in United States Dollars.
- Arrangements for establishing payment via Electronic Fund Transfer may be made by contacting Credit Services at 1-800-752-9338.
- Customers who have entered into a written contract with VaxServe are subject to the payment terms noted in Customer's contract.
- Regardless of VaxServe terms offered above, if the cash discount due date falls on a Saturday, Sunday, or a bank holiday, the discount is considered earned if payment is received no later than the next banking day.
- Customer shall be responsible for paying all applicable federal, state, and local taxes and excises in effect at the time product is shipped by VaxServe.

## CREDIT TERMS

- VaxServe reserves the right to charge fees to those customers associated with the collection process. Fees may include but not be limited to litigation cost, dunning, returned check/ACH/Wire transfers, or credit card decline charges.
- All new and existing Customer accounts are subject to the review of the Credit Services department and any Customer account given credit terms is at the sole discretion of the Credit Services department and subject to change without prior notification.
- Any account that exhibits a poor or negligent (delinquent) payment history may have terms removed and will need to prepay for orders or reservations and/or be subject to the next steps in the collection process including 3<sup>rd</sup> party collections and litigation.
- Customer becomes subject to account closure upon being sent to 3<sup>rd</sup> party collections
- Accounts that have prepayment terms can be reviewed at the customer's request once a successful payment history has been established and will be based on a credit check. (This process will take a minimum of 6-12 months).
- Fluzone Vaccine Performance Credits that remain open on account(s) for greater than 18 months are subject to forfeiture.
- VaxServe reserves the right to apply open credits to all accounts with open invoices and/or open debit balances.
- Dormant accounts (inactive) that have credit balances in excess of 2 years will be subject to the escheatment process.

## GENERAL CREDIT AND REFUND REQUIREMENTS

- VaxServe may, at its discretion, process a Credit Transaction when a valid Transaction was previously processed and the Cardholder either cancelled the Transaction later or returned the goods.
- VaxServe will not reverse credit card payment transactions unless VaxServe is at fault. **It may take up to 30 days for the issuing bank to pass the credit along to the customer.** Customer should contact their issuing bank to see what their policy is regarding refunds to credit cards.

## PRICES

- Please note that all prices and terms listed pertain to non-contracted purchases only.
- Orders will be invoiced at prices in effect at the time that VaxServe accepts the order, unless a VaxServe program states otherwise.
- Prices, availability, and handling policy are subject to change without prior notification.
- Prices include federal excise tax where applicable or not stated otherwise.
- Please address all requests for price quotations to a VaxServe Representative at 1-800-752-9338.

## PRODUCT INFORMATION

- Consult the respective package inserts for full prescribing information. For copies or other product information, please contact your VaxServe Representative or visit [www.vaxserve.com](http://www.vaxserve.com).

## STORAGE AND HANDLING

- Customers taking physical possession of products purchased through VaxServe are fully responsible for complying with all applicable federal, state, and local laws and regulations relating to the storage, handling, and distribution of such products.

**DISCLAIMERS**

- All clerical, typographical, and printing errors are subject to correction. All materials, information, and products (other than those from Sanofi Pasteur) available through this publication (the “content”) are provided “as is” and “as available” for your use. The content is provided “as is” and without warranties of any kind, either expressed or implied, including but not limited to implied warranties of merchantability, fitness for a particular purpose, non-infringement, and title.