

**VaxServe, Inc.**  
**Terms and Conditions of Sale**  
**Revision Date: April 2025**

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## **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 is held invalid, illegal, or unenforceable, such provision or provisions shall be severed, and the remaining Terms and Conditions shall remain binding and effective.
- Waiver by VaxServe of any breach of these Terms and Conditions 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 ("Customer(s)") that have an active/valid license are eligible to purchase vaccines 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; long-term care facilities; pharmacies; third-party billing companies; and contract customers.

## **CHARGEBACKS**

- In the event that Customer has entered into a contractual arrangement with a manufacturer allowing Customer to purchase a product at a discounted price below the product's Wholesale Acquisition Cost (WAC), Customer agrees that VaxServe shall submit a contract chargeback claim for the differential between the Customer's contract price and published WAC ("Chargeback(s)"). In the event VaxServe is denied any Chargeback from

the manufacturer as a result of Customer providing incomplete, inaccurate, or incorrect information to VaxServe or the manufacturer, Customer will be liable to VaxServe for such Chargeback amount. In the event the manufacturer: (i) makes an assignment for the benefit of creditors, files a petition in bankruptcy, is adjudicated insolvent or bankrupt, or if a receiver or trustee is appointed with respect to a substantial part of manufacturer's property or a proceeding is commenced against it which will substantially impair its ability to pay on Chargebacks; or (ii) otherwise defaults in the payment of Chargebacks to VaxServe, Customer will be invoiced and become liable for the unpaid Chargebacks allocable to its purchases from VaxServe.

#### **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 common 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 Customer's VaxServe Representative, Customer Service via [www.vaxserve.com](http://www.vaxserve.com) at any time, or via phone toll-free at 1-800-752-9338, Monday through Friday, between 8:30 AM and 6:00 PM Eastern Time.

#### **CUSTOMER CLAIMS**

- All claims involving discounts, pricing, credits, or returns must be reported to VaxServe within 6 (six) months from 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 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 set forth herein conflict with those contained in such contract, the terms and conditions 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 product 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, 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; (h) Acts of God; or (i) other contingencies of manufacture or shipment. Further, fulfillment of product orders is subject to manufacturer's ability to supply, allocation, or shortage. 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. VaxServe reserves the right 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 OR MISUSE OF THE GOODS, OR FROM ANY OTHER CAUSE WITH RESPECT TO THE PRODUCT(S) CONTRACTED FOR IN THIS AGREEMENT, WHETHER SUCH CLAIM IS BASED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY IN TORT, OR ANY OTHER LEGAL THEORY.

#### **MERCHANDISE FOR RETURN**

- Return Goods Policy: All returns must comply with federal and state laws and regulations. VaxServe accepts product returns in accordance with the respective manufacturer's established return eligibility criteria and policies. All returns must comply with the specific requirements set by the original product manufacturer. Certain products are ineligible for returns per the respective manufacturer's established return eligibility criteria and policies. VaxServe does not accept ineligible product 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. In the event of a product recall or voluntary withdrawal initiated by a manufacturer, VaxServe shall accept return of product subject to the recall, and credit shall be issued only at the manufacturer's expense. All eligible product(s) must be shipped prepaid to Sanofi c/o Inmar, Inc., 3845 Grand Lakes Way, Suite 125, Grand Prairie, TX 75050. Collect shipments will not be accepted. All returns must have a Return Authorization form completed on the Inmar portal at <https://returns.healthcare.inmar.com>. Please contact Customer Service for instructions on returning product due to physical defect. Ineligible returns may be refused. Products returned to VaxServe may be destroyed or returned to the manufacturer. If Customer has any questions regarding the Return Authorization or Return Goods Policy, please contact Customer Service at VaxServe at 1-800-752-9338.
- The Return Goods Policy is subject to change without prior notification.
- Direct purchases of Sanofi influenza vaccines (Fluzone®, Fluzone® High-Dose, or Flublok® Influenza Vaccines) may be returned according to the following terms for each influenza season, subject to certain contractual, promotional, and program exceptions:
  - Customers have the ability to return 15% of their shipped influenza reservation, upon expiration, by presentation of Fluzone®, Fluzone® High-Dose, or Flublok®, or at contract terms, if applicable.
  - Customers may return additional influenza vaccines, upon expiration, within 180 days of expiration for Federal Excise Tax credit only.
- VaxServe reserves the right to designate additional specific products or product configurations as non-returnable for exchange or credit.

- 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. VaxServe representatives may offer information about the Return Goods 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, log onto [www.vaxserve.com](http://www.vaxserve.com) at any time, or call Customer Service, toll-free, at 1-800-752-9338, Monday through Friday, between 8:30 AM and 6:00 PM Eastern Time.
- Upon reservation, confirmation, and ordering of product, Customer commits to purchasing the amount and type of product reserved/confirmed/ordered specified.
- Confirmed reservations for Sanofi influenza vaccines (Fluzone®, Fluzone® High-Dose, or Flublok® Influenza Vaccines) are non-cancellable.
- Actual delivery shall occur and 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. VaxServe may charge a shipping fee for non-vaccine orders below a certain amount. Additional charges may apply for products that require unique shipment accommodations or are shipped directly from the manufacturer. Should Customer have a question regarding Customer shipment, please contact a VaxServe Representative or call Customer Service toll-free at 1-800-752-9338, Monday through Friday, between 8:30 AM and 6:00 PM Eastern Time.
- If Customer orders within 1 month for any individual product(s) are in excess of 150% of the Customer's average monthly purchases calculated over the previous 6 months, then VaxServe reserves the right to reduce, defer, backorder, not accept, or fulfill such orders. If Customer does not have an established ordering pattern of monthly purchases for individual product(s), then VaxServe reserves the right to evaluate the purchase and establish a maximum quantity that will be supplied.
- All orders are subject to acceptance by VaxServe. VaxServe reserves the right to reduce, defer, back order, or not accept such orders.
- 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 contained herein. Acceptance of delivery by Customer will constitute Customer's assent to these Terms and Conditions. These Terms and Conditions, 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 performance, shall be binding upon VaxServe unless made in writing and signed and approved by an officer of VaxServe. No modification of any of these terms will be affected by VaxServe's shipment of product(s) following receipt of Customer's purchase order, shipping request, or similar forms containing printed Terms and Conditions conflicting or inconsistent with the terms herein.

## UNIFY™

- Customers who use the Unify System, VaxServe.com and VaccineShoppe.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 direct orders of Sanofi 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 product(s) is not, at the time of such shipment or delivery, product(s) which may not be introduced into interstate commerce under the provisions of sections 404 or 505 of the Act; and such product(s) is product(s) 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, VaxServe does not manufacturer, test, or warrant the non-Sanofi product(s) it distributes. The manufacturer of the product(s) may warrant certain aspects of the product(s).
- 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 FOR PRODUCTS 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**

- 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.
- Regardless of VaxServe terms offered above, if the cash discount due date falls on a Saturday, Sunday, or a federal or 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.
- 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.

## **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 third party collections and litigation.
- Customer becomes subject to account closure upon being sent to third 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).
- 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.
- Customers who have a credit open on account can request a refund check as long as there are no past due invoices open on account.

#### **PRICES**

- Orders will be invoiced at prices in effect at the time that VaxServe accepts the order, unless a VaxServe program states otherwise.
- Prices pursuant to a contract between the Customer and the respective manufacturer ("Contract Prices") are established by the respective manufacturer and communicated to VaxServe. VaxServe requires confirmation of eligibility from any manufacturer in order to provide Contract Prices to Customer. Upon notification of a price change, VaxServe shall adjust pricing accordingly. Contract Prices are effective as of the date determined by the manufacturer, and effective dates for price changes are also determined by the respective manufacturer.
  - Customer is responsible for notifying VaxServe of any special product pricing arrangements that Customer has negotiated with any product manufacturer or group purchasing organization. Pricing eligibility on such arrangements will be accessible once confirmed and communicated to VaxServe by the manufacturer and loaded in VaxServe's system.
  - VaxServe may at times apply a mark-up or fee to a contract order, or product.
- All prices are subject to change without notice.
- Please address all requests for price quotations to a VaxServe Representative or call Customer Service at 1-800-752-9338.
- 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 in the purchase of product(s) 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.

#### **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.
- Customer represents and warrants that purchases of products through VaxServe are made for Customer's "own-use," and such products are not intended to be sold or transferred for further sale or resale, unless a wholesaler/distributor relationship is established with VaxServe.

#### **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.