

Mead Johnson Nutrition (Canada) Co.
STANDARD TERMS AND CONDITIONS
OF PURCHASE

These terms, conditions, and instructions shall be applicable to all current purchase orders, received by you ("Seller") from **Mead Johnson Nutrition (Canada) Co.** or its applicable affiliate ("Buyer"), whether received by mail, by telephone, or by electronic means (each a "Purchase Order"), from the date of your receipt of these terms until such time as you receive a revised edition of these terms and conditions is made available at Buyer's supplier website or you received notice of revocation of the same. These terms, conditions, and instructions shall apply to all transactions between you and Buyer until such further notice, unless your written objections are received by Buyer within thirty (30) days after you receive this document.

Additional or different terms, conditions, or instructions applicable to a particular order may be agreed to in writing and specified in the body of the Purchase Order, or in an exhibit thereto, and, in the event of a conflict, shall take precedence over these terms, conditions, and instructions with the exception of Section 2, ELECTRONIC TRANSACTIONS, below.

Notwithstanding anything to the contrary contained herein, if Seller and Buyer have executed a master purchase or supply agreement which governs the purchase and sale of the goods in issue, the terms of such master agreement shall be controlling and shall take precedence over these terms, conditions, and instructions and any additional or different terms contained in any document generated by Seller.

1. **ACCEPTANCE:** Buyer's order expressly limits acceptance to the terms and conditions set forth in this document and the applicable Purchase Order. Any terms and conditions contained in a proposal, quotation, invoice, purchase order acknowledgment, or any similar document of Seller shall not constitute a part of the contract of sale resulting from Seller's acceptance of Buyer's order unless such terms and conditions are specifically and expressly incorporated in Buyer's order. Any purported acceptance containing additional or different terms shall be deemed to be an acceptance of the terms and conditions contained in this document, notwithstanding such additional or different terms. Seller's shipment of goods or commencement of services in response to Buyer's order shall constitute acceptance of the terms and conditions set forth in this document and any additional or different terms contained in any acknowledgment or invoice form submitted by Seller shall not constitute any part of the contract of sale resulting from Seller's acceptance and are hereby rejected. Prior courses of dealing, trade usage, and verbal agreements not reduced to a writing signed by Buyer, to the extent they differ from, modify, add to, or detract from, the terms and conditions herein, shall not be binding upon Buyer.

2. **ELECTRONIC TRANSACTIONS:**
 - A. If Seller and Buyer have mutually agreed to the use of an Electronic Data Interchange ("EDI") system to facilitate purchase and sale transactions, Seller agrees:
 - (i) That it shall not contest (a) any contract of sale resulting from an EDI transactions under the provisions of any law relating to whether agreements must be in writing or signed by the party to be bound thereby; or (b) the admissibility of copies of EDI records under the business records exception to the hearsay rule, the best evidence rule or any other similar rule, on the basis that such records were not originated or maintained in documentary form;
 - (ii) That it shall use proper security procedures to protect its EDI records from improper access; and
 - (iii) That the records maintained by Buyer regarding EDI purchase orders issued by Buyer shall be controlling.
 - B. If Seller and Buyer have mutually agreed to an Automated Clearing House to facilitate purchase and sale transactions, the payment term in the Purchase Order shall be extended by five (5) days.
3. **PRICE:** Buyer's order shall be filled at the price specified on the Purchase Order, or at any lower price. If no price is specified, the order shall be filled at the lowest of (a) the price last quoted by seller, (b) the price last paid by Buyer to Seller, or (c) the prevailing market price, unless a higher price is approved in writing by an authorized representative of Buyer's procurement department.
4. **MODIFICATION:** Modification, rescission, or amendment of Buyer's order or the contract of sale resulting from its acceptance shall be ineffective unless approved in writing by an authorized representative of each party.
5. **INSPECTION:** All goods furnished pursuant to Buyer's order shall be subject to Buyer's inspection and approval, notwithstanding prior receipt and payment, and, if unsatisfactory, may be returned, transportation both ways at Seller's expense.
6. **CHARGES:** Seller shall box, crate, or package as necessary for shipment without charge unless otherwise specified in the applicable Purchase Order.

7. **TERMINATION:** Notwithstanding any contrary terms contained above, Buyer shall have the right at its absolute discretion, one (1) day following Buyer's written notice to Seller, to cancel, in whole or part, Buyer's Purchase Order or any contract resulting from its acceptance. In the event of such cancellation, Buyer shall have no obligation to Seller except the obligation to pay all costs actually incurred by Seller prior to the date of termination, provided, however, that in no event shall Buyer be obligated to pay an amount in excess of the amount set out in Buyer's order for the services; advance payments will be refunded accordingly. If Buyer's order or any resulting contract is canceled as a result of the default of Seller, Buyer shall have no obligation to reimburse Seller for any services performed by Seller pursuant to Buyer's order or any resulting contract.
8. **GENERAL REPRESENTATIONS AND WARRANTIES:** Seller represents and warrants that all articles supplied under Buyer's Purchase Order have been produced, sold, delivered, and furnished in strict compliance with all applicable federal, provincial, and local laws, rules, regulations, and/or orders pertaining to employment in the production of and/or sale of the goods. Seller shall execute and deliver such documents as may be required by any federal, provincial or local governing body to effect compliance. Seller shall also deliver to Buyer such documents as Buyer requests as evidence of compliance. All laws and regulations required in agreements of this character are hereby incorporated by this reference. Seller shall defend and hold Buyer harmless from any action which may be instituted against Buyer or any liability which may be imposed or threatened against Buyer as a result of Seller's failure to so comply with such laws and regulations. Without limiting any of the foregoing:
- A. No article supplied under Buyer's order is produced in violation of any applicable federal, provincial, or local laws, rules, regulations and/or orders, including but not limited to, the *Food and Drugs Act*, R.S.C. 1985, c. F-27.
 - B. No article, software, services, or product supplied under Buyer's order, including Work Product (hereafter defined), infringes the claim of any trademark, copyright, patent, or other proprietary right of a third party; however, Seller does not warrant against infringement to the extent caused by the use of the article in combination with other material except that if Seller has knowledge of such intended combination, Seller warrants, to its best knowledge, no third party rights will be infringed by such use;
 - C. All articles, software, or product supplied under buyer's order shall be shipped in full compliance with packaging, labeling, shipping, and documentation requirements, including requirements concerning hazardous materials, substances, and waste of all federal, provincial, local, or international governmental agencies or authorities regulating any segments or modes of transportation employed to effect delivery of such articles to Buyer, and all hazardous materials, substances, and waste shall be packaged, marked, and labeled in accordance with the applicable regulations of the federal Department of Transportation, the International Civil Aviation Organization, and the International Maritime Organization; and
 - D. Seller agrees that any software, products or services provided under this Purchase Order will comply with all federal, provincial and international laws, regulations, rules and/or orders.
 - E. Without limiting Seller's liability to Buyer or third parties hereunder, Seller shall maintain Commercial General Liability Insurance to include contractual and products/completed operations coverages to meet its indemnification obligations under this Purchase Order or loss as required by applicable international, country, federal, provincial, or local laws, regulations or orders. All such insurance shall be primary and not contributory with regard to any other available insurance to Buyer. Seller represents and warrants that it shall promptly file all claims made under this Purchase Order with its insurance carriers, Seller agrees to defend, indemnify, and hold harmless Buyer against all liability, costs, expenses (including attorney fees), damages and judgments occasioned by or resulting from breach of any of the foregoing warranties.
 - F. Seller warrants that all of the articles and all of the material furnished under a Purchase Order are free and clear of all liens and encumbrances whatsoever and that Seller has a good and marketable title to same and Seller agrees to hold Buyer free from defects in materials and workmanship will conform to applicable specifications, drawings, samples or other descriptions given, and shall be free from

defect. The aforesaid express warranty shall be in addition to any standard warranty or service guarantee given to Buyer by Seller. All warranties shall be construed as conditions as well as warranties and shall not be deemed to be exclusive. Seller represents and warrants that it will comply, at all times, with Buyer's Supplier Code of Conduct.

9. **SECURITY:** Seller shall observe all facilities access, safety, and security measures required by Buyer. Seller shall assure that its employees follow buyer policies while at any Buyer site or any third party site designed by Buyer.
10. **NONDISCLOSURE:** Except to the extent provided in Section 11, neither party shall disclose any information pertaining to any transactions between the parties, including, but not limited to, Purchase Order(s), or the contract of sale resulting from the acceptance of Purchase Order(s), including its existence, without the prior written consent of the other party.
11. **CONFIDENTIALITY:** Each party shall preserve as confidential all, and shall not disclose any, proprietary or confidential information of the other party (including information of a third party which a party is under an obligation to maintain in confidence) to which each party may have access as a result of these terms and conditions, the Buyer's order, the contract of sale resulting from its acceptance or the presence of a party's employees at the other party's site. This confidentiality obligation shall apply to all such proprietary or confidential information of each party, whether in its original form or a derivative form, including Work Product resulting from Seller's performance of any Buyer order. Neither party shall take photographs of any portion of any work performed pursuant to any order or duplicate any drawings or specifications without the prior approval of the other party. Nothing herein shall prevent the communication to others of any proprietary or confidential information which the receiving party can show was known to it or its representatives prior to its receipt from the disclosing party hereunder, was lawfully obtained by the receiving party or its representatives other than by disclosure from the disclosing party, or became public knowledge through no fault of the receiving party.
12. **PUBLICITY:** Neither party may advertise or promote using the name or description of the other party (including, but not limited to, disclosing the existence of these terms and conditions), without in each instance the express written consent of the other party, except as required by law. If required

by law, the party seeking to disclose shall provide copies of the disclosure for the prior review and comment by the other party's external corporate communications (public relations) department, which shall have a minimum of five (5) business days to review the materials. The Mead Johnson logo may not be used under any circumstance.

13. **ASSIGNMENT:** Except as otherwise provided herein, neither party shall in any manner delegate its duty of performance or assign its rights or obligations herein, under Buyer's order or the contract of sale resulting from its acceptance without the other party's prior written consent. Any attempted assignment in violation of the preceding sentence shall be of no force or effect.
14. **FDA INSPECTION:** Seller acknowledges that certain material(s) purchased hereunder may be incorporated into products which will be purchased by an agency or branch of the federal government. In the event the federal government requests an inspection by the FDA of the manufacturing facilities and records relative to the materials purchased hereunder, Seller hereby agrees that such inspection shall be permitted, and Seller shall immediately notify Buyer when it learns such an inspection is scheduled or is occurring.
15. **GOVERNING LAW:** Buyer's order and any agreement of sale resulting from its acceptance shall be governed by and construed according to the laws of the Province of Ontario.
16. **OWNERSHIP OF MATERIALS:** Buyer acknowledges that the services provided by Seller herein are proprietary to Seller. All rights to such Services not granted to Buyer hereunder are expressly reserved to Seller. Without limiting the foregoing, Seller shall retain and reserve all intellectual property rights, title, and interest in the following: (a) all ideas, concepts, know-how, methodologies or techniques which Seller owned previously or independently of the performance of services herein, or which were conceived by Services performed solely by Seller without the input or assistance of Buyer during the performance of services herein; and (b) any materials developed by or on behalf of Seller previously or independently of the performance of services herein. Notwithstanding the foregoing, any and all reports, plans, information, data, drawings, computer software, renditions, mock-ups, prototypes or other works created by Seller for Buyer in connection with the services provided hereunder (collectively, "Work Product") shall be owned by Buyer.
17. Seller shall use reasonable efforts to ensure that the services will be executed in accordance with

Buyer's order and all applicable federal, provincial, local and international laws, rules, regulations and guidelines. Seller shall procure all its own expense all permits and licenses required for the performance of the services and shall arrange for all required inspections. Unless Buyer directs otherwise, Seller further warrants that all materials utilized in the services will be new. Seller warrants that all Work Product produced under this Purchase Order shall be of original development and all Seller property shall be of original development or licensable by Seller, as the case may be, and all Work Product and property licensed or owned by Seller and used in the performance of any work under this Purchase Order shall not infringe or violate any patent, copyright, trade secret, trademark, or other third party intellectual property right. Seller shall perform all services under this Purchase Order on a professional reasonable basis and in a diligent, workmanlike, and expeditious manner. Seller warrants that it has enforceable written agreements with all of its employees and all subcontractors (i) assigning to Seller ownership of all patents, copyrights and other proprietary rights created in the course of their employment or engagement; and (ii) obligating such employees upon terms and conditions no less restrictive than contained herein, not to use or disclose any proprietary rights or information learned or acquired during the course of such employment or engagement, including without limitations, any Work Product, and any other information.

18. **LIABILITY INSURANCE:** If Seller will perform services on Buyer's property, Seller shall maintain in force during the performance of such services liability insurance for not less than the following limits of liability:

Worker's Compensation	-	Statutory
General Liability – Bodily Injury or Property Damage (per occurrence)	-	\$2,000,000
Bodily Injury or Property Damage (in aggregate)	-	\$10,000,000
Professional Liability	-	\$1,000,000

19. **INDEMNIFICATION:** Seller agrees to defend, indemnify, and hold harmless Buyer, its directors, officers, agents, and employees from and against any and all claims, demands, losses, and expenses, including attorney fees and costs and expert witness fees and costs, arising out of suits, claims and demands by reason of injury or death of any person(s) or damage to any property to the extent attributable to the acts, errors, or omissions of Seller, its subcontractors, and their officers, agents or employees. Seller shall have no liability to Buyer to the extent such claims or losses are due to

the gross negligence or willful misconduct of Buyer, its employees or agents.

IF THIS PURCHASE ORDER INVOLVES SOFTWARE, THE FOLLOWING TERMS AND CONDITIONS SHALL APPLY IN ADDITION TO ANY SET OUT ABOVE:

20. **LICENSE.** Seller hereby grants to Buyer, and Buyer hereby accepts, on the following terms and conditions, a nonexclusive and nontransferable, fully paid-up irrevocable, world-wide, perpetual license (unless otherwise specified in the Purchase Order) to use the software for the number of users or copies of the software provided on the Purchase Order (the "License"). Seller and Buyer expressly agree that any software shrink-wrap and click-through software licensing agreements shall not apply to any software purchased under the Purchase Order unless the Buyer expressly agrees in writing to such shrink-wrap or click-through software licensing agreement.

21. **USE OF SOFTWARE AND DOCUMENTATION.**

- A. Buyer may, as part of the License, make additional copies of the software and documentation to support the licensed software and documentation. Buyer may also make one (1) backup and archival copies of the software and documentation. Unless otherwise provided on the Purchase Order, Buyer shall have the right to use the software on, or in connection with, any CPU that it utilized to fulfill its data processing needs. Buyer reserves the right to use the software at one or more sites, and to transfer such software, upon the prior written consent of Seller, which shall not be unreasonably withheld.
- B. Buyer, its agents, contractors, assignees and employees shall have the right to use the software and to operate and use the software within the scope of the License for Buyer's internal business purposes only.
- C. The License granted pursuant to Section 20 above or the Purchase Order shall commence upon execution of the Purchase Order.

22. **SOFTWARE REPRESENTATIONS AND WARRANTIES:**

- A. Seller represents and warrants that at delivery and for no less than ninety (90) days following receipt of the software (or any update thereto) by Buyer (the "Warranty Period") the software shall

conform to and will operate in accordance with the Purchase Order and all documentation and specifications supplied by Seller to Buyer. Seller shall not be responsible to the extent failures are caused by (a) Buyer's failure to use the software in accordance with instructions included in the documentation provided to Buyer by Seller, or (b) the modification of the software by any person other than Seller, its employees, agents, affiliates or subcontractors (unless such modification was authorized or approved by any of the foregoing).

- B. Seller represents and warrants that it shall at all times document the operation of the software in a manner consistent with the best practices of the software development industry, and shall use reasonable effort to ensure that such documentation shall accurately reflect the operation of the software and enable a person reasonably skilled in computer programming and in possession of the software source code to use and maintain the software fully and completely.
- C. Seller will pass through or assign to Buyer any third party's warranty obtained by Seller in connection with any product provided to Buyer. Notice regarding warranty claims raised by Buyer due to defects and/or nonconformities in the equipment or in the operation of the equipment shall be given to Seller, and upon receipt of such a notice, Seller shall take all reasonable steps necessary to effect prompt repair of the equipment.
- D. If maintenance services are elected by Buyer, the maintenance services agreement shall become effective at the end of the Warranty Period of the Products by Buyer, and shall renew annually unless otherwise terminated by Buyer, provided Seller notifies Buyer in writing thirty (30) days in advance of such renewal date. Notwithstanding the foregoing, Buyer's failure to install or utilize any improvements, enhancement or newly released versions of the Product shall have no effect on Seller's provision of maintenance services. Seller represents and warrants that maintenance services for the current version and the two immediately preceding versions of a Product shall always be available from Seller, and maintenance services for any other prior versions of the Product shall be available for a minimum of two (2) years from the date such Product was purchased by Buyer or, in the case of new versions

provided under maintenance, for at least two (2) years from the date that Buyer received such new version. Seller shall provide to Buyer as part of maintenance services, updates and upgrades to the Product at no additional cost to Buyer. The provisions contained in these Terms shall control over any conflicting provisions contained in any maintenance agreement of Seller.

- E. Seller represents and warrants that the occurrence in or use by any Product supplied by Seller of any dates will not adversely affect its performance with respect to date-dependent data, computations, output, or other functions (including, without limitation, calculating, comparing, and sequencing). At Buyer's request, Seller will provide sufficient evidence to demonstrate the adequate testing of the Product to meet the foregoing requirements.
- F. Seller represents and warrants (i) unless authorized in writing by Buyer or (ii) necessary to perform valid duties under the software documentation, any software provided to Buyer by Seller for use by Seller or Buyer shall: (a) contain no hidden files, (b) not replicate, transmit or activate itself without control of a person operating computing equipment on which it resides; (c) not alter, damage, or erase any data or computer programs without control of a person operating the computing equipment on which it resides; and (d) contain no key, node lock, time-out or other function, whether implemented by electronic, mechanical or other means, which restricts or may restrict use or access to any programs or data developed under a Purchase Order, based on residency on a specific hardware configuration, frequency of duration of use, or other limiting criteria ("Illicit Code"). Provided and to the extent any program has any of the foregoing attributes, and notwithstanding anything elsewhere in this Purchase Order to the contrary, Seller shall be in default of this Purchase Order.
- G. EXCEPT FOR THE WARRANTIES SET FORTH ABOVE, THE SOFTWARE IS LICENSED "AS IS", AND SELLER DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EACH PARTY'S CUMULATIVE

LIABILILTY TO THE OTHER PARTY OR ANY OTHER THIRD PARTY FOR ANY LOSS OR DAMAGES RESULTING FROM ANY CLAIMS, DEMANDS, OR ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL NOT EXCEED THE FEE PAID TO SELLER FOR THE USE OF THE SOFTWARE OR OTHER APPLICABLE PRODUCT (AS PER THE PURCHASE ORDER). IN NO EVENT SHALL A PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES OR LOST PROFITS, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILILTY OF SUCH DAMAGES. SOME STATES DO NOT ALLOW THE LIMITATION OF EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS AND EXCLUSIONS MAY NOT APPLY. NEITHER THIS LIMITATION OF LIABILITY CLAUSE NOR ANY OTHER PROVISION THAT LIMITS SELLER'S OBLIGATIONS HEREUNDER SHALL BE APPLICABLE TO ANY CLAIM ASSERTED BY ANYONE OTHER THAN BUYER. BUYER RESERVES ALL RIGHTS IT MAY HAVE AGAINST SELLER IN THE EVENT OF ANY CLAIMS BROUGHT BY A PERSON OR ENTITY OTHERS THAN BUYER.

23. LICENSE TERMINATION.

- A. In the event of a material breach by Buyer of any of its obligations under the applicable Purchase Order, seller may terminate the licenses subject to such material breach, upon thirty (30) days advance written notice to Buyer, provided that Buyer has not cured the breach within such notice period. Thirty (30) days after termination of this Purchase Order pursuant to this Section 23(A), Buyer shall discontinue further use of terminated licenses. Buyer shall provide Seller with written certification indicating the destruction of such copies of the software in Buyer's possession or under its custody or control.
- B. In the event of a breach by Seller of any of its representations, warranties or obligations under the applicable Purchase Order, these Terms and Conditions or the maintenance agreement, Buyer may

terminate either the License, as well as any associated maintenance services, or the maintenance services (if any) alone, upon thirty (30) days notice to Seller, provided that Seller has not cured the breach within such notice period.

- (i) If Buyer terminates the License and the maintenance services based on such breach, Seller shall refund on a pro rata basis any and all amounts paid hereunder by Buyer for the license fee as well as the maintenance services. Thirty (30) days after termination of the Purchase Order pursuant to this Section 23(B)(i), Buyer shall discontinue further use of such licenses. Buyer shall provide Seller with written certification indicating the destruction of such copies of the software in Buyer's possession or under its custody or control.
 - (ii) If Buyer terminates only the maintenance services, seller shall refund on a pro rata basis any and all amount paid hereunder by Buyer for maintenance services. Buyer shall retain all of its rights under the License.
- C. The other provisions of the Purchase Order and these Terms and Conditions shall survive termination of any License.

24. NON-APPLICABILITY OF CERTAIN LAWS: Seller and Buyer hereby acknowledge and agree that any provisions of any federal, provincial, or local law adopting exactly or in modified form the Uniform Computer Information Transactions Act ("UCITA") and the United Nations Convention on Contracts for the International Sale of Goods (including any provision of any law adopting exactly or in modified form such laws) shall not be applicable to this Purchase Order. Furthermore, both Seller and Buyer waive any and all rights arising from any such law.

IF THIS PURCHASE ORDER INVOLVES PERFORMANCE BY SELLER OF INSTALLATION, MAINTENANCE OR OTHER SERVICES, THE FOLLOWING TERMS AND CONDITIONS SHALL APPLY IN ADDITION TO ANY OTHER APPLICABLE TERMS SET FORTH ABOVE:

25. LABOR FURNISHED BY SELLER: Seller acknowledges and agrees that in performing services, Seller will be acting solely as an independent contractor, and neither Seller nor any of its employees, associated consultants, subcontractors or employees of such consultants or subcontractors shall be deemed to be employees or agents of Buyer for any purpose. Subject to Section 26 below, all persons employed by Seller

in the performance of the services are employees of Seller. Seller shall carry such employees on the payrolls of Seller and make all required payments to federal, provincial and local authorities covering payroll taxes and any other payments relating to such persons' employment.

26. **SUBCONTRACTORS:** Seller shall not use any subcontractor without obtaining Buyer's written approval in advance. Subject to the foregoing, if Seller should use a subcontractor, Seller shall be fully responsible for services performed by the subcontractor to the same extent as if the services were performed directly by Seller.
27. **VERIFICATION AND ACCEPTANCE OF SERVICES:** Seller shall document each maintenance call with a work ticket, which shall be signed by Buyer's representative and submitted with Seller's invoice. Each deliverable under the Purchase Order shall be subject to acceptance testing by Buyer to verify that the deliverable satisfies all requirements of the deliverable conveyed by Buyer to Seller. If Buyer discovers a non-conformity within ninety (90) days following delivery of a deliverable and Buyer notifies Seller of the non-conformity, seller shall either correct the non-conformity at no additional charge in a timely, professional manner, or, at Buyer's sole discretion, refund monies paid by Buyer for the services attributable to or affected by the non-conforming deliverable.
28. **LIENS:** Seller agrees and warrants that no mechanics liens shall attach to Buyer's property by virtue of Seller's default in paying its employees, suppliers or subcontractors.

PACKAGING INSTRUCTIONS

Markings:

- Show Buyer's Purchase Order Number on all Packages.
- Each Container Must Also Be Plainly Identified By:
 - Name of Manufacturer
 - Buyer's Product Title
 - Net Weight
 - Parcel Number of Total Parcels Shipped
 - Country of Origin Marking