



*National Distributor, Strategic Pharmacy, and Wholesaler*

## **Purchase Terms and Conditions**

Jan 2022

**LifeScan Canada, ULC**  
*Company Confidential*

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## 1. BACKGROUND INFORMATION

This Purchase Terms and Conditions Policy (“Policy”) governs the sale and distribution of Products sold by LifeScan Canada, ULC. (“LifeScan”) to Customers (as defined below) for distribution in Canada. This Policy supersedes all prior policies, understandings or agreements between Customer and LifeScan regarding the distribution of its Products (as defined below) unless otherwise stated in this Policy or in a written agreement specifically referencing this Policy. Unless otherwise set forth in a written agreement to which LifeScan is a party and which is formally executed by LifeScan, the terms and conditions set forth herein, shall control and shall supersede all Customer terms or conditions located in any Customer document. **Customer’s order and acceptance of Product, notwithstanding what Customer’s documents (including without limitation any purchase order) may say, signifies and confirms Customer’s understanding and acceptance of this Policy over any of its own terms or conditions and the rights of LifeScan herein.**

## 2. DEFINITIONS

“*Affiliate*” means (a) with respect to Customer any Person, any other Person who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such Person, and includes any Person in like relation to an Affiliate and (b) with respect to LifeScan, Lifescan Global Corporation and its subsidiaries. A Person shall be deemed to “control” another Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise; and the term “controlled” shall have a similar meaning.

“*Authorized National Distributor*” means a distributor or retailer with warehousing and distribution capabilities acceptable to LifeScan who purchases LifeScan Product for resale to consumers or other business customers.

“*Authorized National Strategic Pharmacy*” means a pharmacy or certain LifeScan approved outlets of the Canadian Diabetes Associations (CDA) in each case with on-site meter training and warehousing and distribution capabilities acceptable to LifeScan who purchases LifeScan product for resale or distribution to consumers.

“*Authorized National Wholesaler*” means a wholesaler with warehousing and distribution capabilities acceptable to LifeScan who purchases LifeScan Product for resale to other business customers.

“*Canadian Medical Devices Regulations*” refer to the Medical Devices Regulations (SOR/98-282), which govern the importation and sale of medical devices in Canada.

“*Consumer*” means an individual end-user of Product (i.e. a patient).

“*Counterfeit Goods*” means: (i) products not manufactured or distributed with the authorization of the legal brand owner that are designed, dressed, branded or packaged in a manner intended to be indistinguishable, or having the effect of being indistinguishable, from that of the genuine original, and (ii) products that are designated in writing by LifeScan or any of its Affiliates, acting reasonably, as Counterfeit Goods.

“*Customer*” or “*Customers*” means an: (1) Authorized National Distributor, (2) Authorized

National Strategic Pharmacy, and/or (3) Authorized National Wholesaler who sells or distributes Products.

“*Destination*” means Customer’s designated location in Canada to receive Product as specified on Customer’s purchase order.

“*Diverted Product*” means Product that is or has been: (i) distributed in a country or geographic region other than the country or geographic region in which it was intended by LifeScan or its Affiliates to be distributed, or (ii) that was originally sold for distribution into any channel other than retail, other than as originally intended, and in violation of a LifeScan or LifeScan Affiliate policy, contract law or regulation.

“*Person*” is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, a governmental authority, and the executors, administrators or other legal representatives of an individual in such capacity.

“*Product*” or “*Products*” means any blood glucose monitoring system or other diabetes care products (test strips or other consumables related to diabetes care) available for purchase from LifeScan or its Affiliates for use by Consumers at home and, for greater certainty, does not include insulin pumps or any products sold to healthcare facilities.

### 3. ORDER MANAGEMENT

#### 3.1 TERMS OF SALE AND SHIPMENT

To qualify as a Customer, Customer must meet the criteria as indicated in this Policy and new Customers must submit a new account application form that meets LifeScan’s credit approval criteria.

Customer’s “Ship To” and “Bill To” locations must be in Canada. Further, Customer may not sell Product outside of the 10 Provinces and/or 3 Territories of Canada. Sale of Product by Customer outside of Canada is impermissible and may result in legal action by LifeScan, including, but not limited to, compensatory or punitive damages and/or LifeScan refusing to sell Product to that Customer in the future. Customer must not sell Products to persons who directly or indirectly resell those Products outside Canada. Customer must provide upon request all appropriate documentation to LifeScan reflecting that Customer has complied with and met all regulatory, license and other requirements in accordance with local, provincial, federal and applicable international laws, rules, statutes or regulations including, without limitation, the US *Foreign Corrupt Practices Act*.

LifeScan reserves the right, in its sole discretion, to adjust credit limits as deemed appropriate. Customers must keep their account balances with LifeScan in good standing.

Customer must order no less than CAD\$25,000 in total of Product direct from LifeScan per ship-to account in each 12-month rolling period from the account opening date. All orders must be no less than CAD\$2,000 of Product.

LifeScan reserves the right to charge Customer a surcharge to account for special ordering, handling, and/or shipping procedures.

LifeScan reserves the right, in its sole discretion, to immediately terminate purchase activity with a Customer that buys or sells Product in a manner that is inconsistent with this Policy or with any local, provincial, federal or applicable international laws, rules, statutes or regulations or that fails to pay any invoice for Products. In particular, and without limiting the generality of the foregoing, LifeScan may terminate purchase activity with a Customer if it becomes aware of any activity by Customer or its Affiliates that raises potential corruption of public officials issues.

All Products are shipped Delivered at Place (DAP) via regular ground transportation with freight and insurance paid for by LifeScan.

LifeScan will use commercially reasonable efforts to ship Product with product expiration dating of 12 months or greater from the date of shipment unless otherwise mutually agreed upon in advance by LifeScan and Customer.

### 3.2 ORDER MANAGEMENT PROCEDURES

Customer will transmit orders for Product to LifeScan using a mutually acceptable format including but not limited to electronic transmission, fax, or email. Customer will transmit orders including Customer account number (indicating bill-to and ship-to address), purchase order number, date, payment terms, product number and/or description, quantity, price per line item ordered, destination, line total and purchase order total. All Product quantities ordered must adhere to full case sizes and not require case splitting. Orders are not binding until accepted by LifeScan.

### 3.3 ORDER FREQUENCIES AND VOLUME

LifeScan reserves the right, in its sole discretion, to restrict, limit and cancel orders or any portion thereof.

## 4. COUNTERFEIT GOODS AND DIVERTED PRODUCT

### 4.1 ORIGINAL SOURCING

No Customer or its Affiliates may purchase or sell Counterfeit Goods or Diverted Product. The purchase or sale of Counterfeit Goods or Diverted Product constitutes a breach of this Policy and will result in the forfeiture of status as a Customer and may result in legal action by LifeScan, including, but not limited to, immediate termination of contracts, ban from future purchases of Product and/or claims for appropriate compensatory and/ or punitive damages.

### 4.2 NO TRADE AMONGST NON-CUSTOMERS

Purchase or trade of Product by a Customer from or between any source other than LifeScan or a Customer is not permitted. Such purchases, sales or trades constitute a breach of this Policy and

will result in the forfeiture of status as a Customer and may result in legal action by LifeScan, including, but not limited to, immediate termination of contracts, ban from future purchases of Product and/or claims for appropriate compensatory and/or punitive damages.

## 5. AUDIT

In order to verify that the Customer has complied with its obligations under this Policy, LifeScan may audit all relevant books and records of the Customer and its Affiliates. If Customer fails to make all such books and records available for audit, LifeScan reserves the right in its sole discretion to limit or restrict shipment to Customer. Audits will be on reasonable notice, during regular business hours and limited to two in any 12-month period. Unless in response to a governmental investigation, audits will be limited to the three-year period prior to the date of the audit notice, provided, however, that if an audit reveals any facts or circumstances from which LifeScan might reasonably infer that Customer has failed to comply with any material term of this Policy, LifeScan shall have the right to expand the audit period to include any period of time during which LifeScan had shipments with the Customer and/or its affiliates. Further, if an audit reveals any facts or circumstances from which LifeScan might reasonably infer that Customer has failed to comply with any material term of this Policy, LifeScan shall have the right, in addition to any other remedies available to it, to limit or restrict shipment to Customer and its Affiliates. Customer agrees that it will, at all times during this Policy maintain systems capability to capture record and report sales of all LifeScan Products completely and accurately.

## 6. TERMS AND CONDITIONS

### 6.1 TERMS & PAYMENT SCHEDULE

LifeScan's payment terms are 1% for 15 days, net 30 days from the date of LifeScan's invoice. LifeScan reserves the right to alter its payment terms at its sole discretion. LifeScan encourages the use of electronic invoice and payment options. For those customers who choose not to utilize electronic invoice and/or payment options, ample mailing time must be allowed so that funds are received in LifeScan's bank on or before the discount due date in order to receive the discount. Payments received beyond the discount due date will not be honoured for the discount and Customer agrees to repay LifeScan for any unearned discounts taken. In the event that Customer takes unearned discounts, Customer agrees to repay LifeScan or to allow LifeScan to set-off such amounts from any amounts owing by LifeScan or held in Customer's account. Non-compliance with payment terms may result in the loss of credit terms, altered payment terms for any contractual agreements, and/or delayed shipments. There is no additional cash discount or interest offered for any early payments. LifeScan reserves the right to apply freight and/or insurance charges for special shipment requests.

### 6.2 TITLE TRANSFER

Title to and risk of loss of each article of the Products shall pass to the Customer immediately upon the arrival of the Products at the Destination.

### 6.3 PRICE CHANGE

LifeScan, in its sole discretion, will determine the effective date of any change in price of

Product. Price adjustment for inventory on hand or en route to Customer is not permitted. Unless otherwise expressly stated by LifeScan, price changes will be effective immediately. All orders received by LifeScan will be shipped at the price in effect at the time of LifeScan's receipt of orders.

In the event of a price change, LifeScan will not allow any buy-in or forward-buy. LifeScan reserves the right to monitor and/or restrict orders to historical levels. LifeScan reserves the right to restrict Customer orders placed in anticipation of Product price changes by using methodology, including, but not limited to, current vs. historical purchase trends.

## 7. INVENTORY MANAGEMENT

### 7.1 RETURNED GOODS & CLAIMS (Credit Requests)

**Prior authorization for all returns must be obtained from LifeScan's Customer Experience Department. The decision as to whether a return will be authorized is at LifeScan's absolute and sole discretion. A Return Authorization Number (RA#) will be issued to Customer.** Returns not having received prior authorization will not receive handling priority and credit will not be issued if the returned product is, in fact, not eligible for return.

LifeScan will only accept returned product and issue 100% credit for the following reasons:

- Product being returned due to a shipment error on the part of LifeScan.
- Product which has been damaged in transit to Customer. Damages which occur in transit from Destination to another location are not in scope of this Policy.
- Product with up to 3 months remaining before Product expiry or up to 12 months after Product expiry.
- Product that has been requested back by LifeScan due to a product recall or other activity.

Products more than 12 months past Product expiry cannot be returned for credit due to Product's expiry date.

Product returns to LifeScan will only be accepted and credited if product was originally purchased directly from LifeScan, and only if it is in its original unopened boxes. Return Authorization number must be clearly indicated on the physical packaging of returned product, otherwise credit may not be issued. LifeScan does not offer product replacement, in lieu of credit. Product returns are not allowed for over stock Product.

Due to carrier limitation of liability, all claims for shortages, damage, or shipping errors must be submitted in writing to LifeScan Customer Experience within 48 hours of the receipt of goods. Damaged product will be received by the customer and reported as damaged in writing. Damaged product should not be refused and returned with the carrier. Claims for pricing, promotion, or other invoicing errors must be submitted within 60 days of the invoice date.

**Credit will be issued for the purchase price, net of all discounts and allowances.**



## 7.2 OBSOLESCENCE AND RATE OF RETURN LIMITS

LifeScan reserves the right to limit or restrict Customer purchase activity for Customers with Product obsolescence and/or return rates that are considered excessive in light of industry standards. Recalls and LifeScan initiated returns are excluded from these calculations.

## 8 QUALITY AND REGULATORY COMPLIANCE REQUIREMENTS FOR AUTHORIZED NATIONAL DISTRIBUTORS AND AUTHORIZED NATIONAL WHOLESALERS

Authorized National Distributors and Authorized National Wholesalers (referred to below as “Distributor/Wholesaler”) are responsible for performing the following activities in compliance with the Canadian Medical Devices Regulations (referred to below as “Canadian Regulations”).

*Note: this section does not apply to Authorized National Strategic Pharmacies (see Section 9)*

### 8.1 ESTABLISHMENT LICENCE

The Distributor/Wholesaler is required to maintain an Establishment Licence in accordance with Sections 44, 45, 46.1 and 48 of the Canadian Regulations. The Distributor/Wholesaler will cooperate in providing to LifeScan, in a timely manner, information requested by LifeScan in support of quality and regulatory compliance matters relating to the Products.

### 8.2 STORAGE, HANDLING & DISTRIBUTION OF PRODUCT

The Distributor/Wholesaler is required to maintain distribution records and establish and implement distribution procedures in accordance with Sections 52-56 of the Canadian Regulations. They are required to handle and store all Products in accordance with requirements identified in the Product labelling and ensure that Products are not subject to mix-ups, damage, deterioration, contamination or other adverse effects during handling and storage. Warehouse areas must be segregated by physical or computerized means to prevent mix-ups with respect to quarantined and released product and between similarly packaged products. Damaged, recalled or returned Products must be suitably marked and segregated from Products acceptable for release.

### 8.3 COMPLAINT HANDLING & RECALLS

The Distributor/Wholesaler is required to maintain complaint handling records and establish and implement complaint handling procedures in accordance with Sections 57 and 58 of the Canadian Regulations. Any complaints received related to Products must be forwarded to LifeScan at **1-800-663-5521** within one (1) business day (so LifeScan can provide complaint information to the Manufacturer of the Product), unless the Distributor/Wholesaler is certain the complaint has already been submitted directly to LifeScan by the same source.

The Distributor/Wholesaler is required to establish and implement procedures related to recalls of Products in accordance with Section 58 of the Canadian Regulations. LifeScan will notify Customers in the event of a Product recall and provide instructions on how to assist LifeScan in recovering and returning all affected merchandise. The Distributor/Wholesaler will act in a timely manner on recall instructions communicated to it by LifeScan. No recall action shall be initiated by the Distributor/Wholesaler without written consent from LifeScan, unless LifeScan

or Manufacturer of the Product fails to initiate such action within a reasonable timeframe after being requested to do so by the Distributor/Wholesaler and there has been an opportunity for consultation on the matter between the Distributor/Wholesaler and LifeScan. Where appropriate, Products that are associated with complaints and recalls must be returned to LifeScan as per the returned goods process as directed by LifeScan, for timely investigation.

## **9 QUALITY AND REGULATORY COMPLIANCE REQUIREMENTS FOR AUTHORIZED NATIONAL STRATEGIC PHARMACIES**

Authorized National Strategic Pharmacies (referred to below as “Pharmacy”) are responsible for performing the activities outlined below.

*Note: this section does not apply to Authorized National Distributors and Authorized National Wholesalers (see Section 8 above)*

### **9.1 STORAGE, HANDLING & DISTRIBUTION OF PRODUCT**

The Pharmacy is required to maintain distribution records and establish and implement distribution procedures in accordance with Sections 52-56 of the Canadian Regulations. They are required to handle and store all Products in accordance with requirements identified in the Product labelling and ensure that Products are not subject to mix-ups, damage, deterioration, contamination or other adverse effects during handling and storage. Warehouse areas must be segregated by physical or computerized means to prevent mix-ups with respect to quarantined and released product and between similarly packaged products. Damaged, recalled or returned Products must be suitably marked and segregated from Products acceptable for release.

### **9.2 COMPLAINT HANDLING & RECALLS**

Any complaints received related to Products must be forwarded to LifeScan at **1-800-663-5521** within one (1) business day (so LifeScan can provide complaint information to the Manufacturer of the Product), unless the Pharmacy is certain the complaint has already been submitted directly to LifeScan by the same source.

LifeScan will notify Customers in the event of a Product recall and provide instructions on how to assist LifeScan in recovering and returning all affected merchandise. The Pharmacy will act in a timely manner on recall instructions communicated to it by LifeScan. Where appropriate, Products that are associated with complaints and recalls must be returned to LifeScan as per the returned goods process as directed by LifeScan, for timely investigation.

## **10 FINANCIAL MANAGEMENT**

### **10.1 DEDUCTIONS**

Any deductions for amounts otherwise due and owing to LifeScan must receive prior authorization by LifeScan and must be accompanied by appropriate supporting documentation. Unauthorized deductions and those submitted without proper documentation may result in immediate purchase suspension. Unauthorized deductions must be repaid to LifeScan immediately upon request. In the event that Customer takes unauthorized deductions, Customer

agrees to repay LifeScan or to allow LifeScan to set-off such amounts from any amounts owing by LifeScan or held in Customer's account.

## 10.2 NON-COMPLIANCE FEES AND FINES

LifeScan does not allow nor pay non-compliance fees or fines. Any deductions taken, or invoices received will not be honoured and could result in purchase suspension. Non-compliance fees and fines include but are not limited to fees or fines for early or late requested order arrival dates, missed order delivery appointments, missed carton or labeling requests or any other non-compliance fees or fines.

## 10.3 CREDIT REVIEW

Customer is required to furnish financial documentation upon request. Financial documents requested by LifeScan Accounts Receivable department are used along with other factors to determine a Customer's credit limit. Acceptable financial documents are a Customer's Income Statement, Balance Sheet and Cash Flow Statement for the period requested; audited financial statements are preferred. Substitutions to these documents, such as a tax return, must be approved in advance. Refusal to provide financial documents may result in Customer's account being placed on credit hold.

## 11 GENERAL PROVISIONS

### 11.1 RESPONSIBILITIES

Customer shall abide by this Policy, and with any local, provincial, federal or applicable international laws, rules, statutes or regulations (including, without limitation, the US Foreign Corrupt Practices Act) governing resellers or distribution of products.

### 11.2 PRODUCT AND PRICING MANAGEMENT

It is the Customer's responsibility to maintain Product and Pricing information on its own systems. LifeScan will make commercially reasonable efforts to notify Customer when there are changes to LifeScan Products.

### 11.3 USE OF DATA

Price and Product related data is the property of LifeScan. Customers are strictly forbidden from using or disclosing any Product or Price related data for anything other than its internal administrative purposes unless expressly authorized by LifeScan. In particular and without restricting the generality of the foregoing price and Product data may not be shared with Affiliates, alliances, joint venturers, customers of the Customer and/or LifeScan competitors. This prohibition includes, but is not limited to, presenting Product or pricing data in a manner that is in conflict with any interest of LifeScan.

### 11.4 SERVICES OR FEES

LifeScan will not pay for services or pay any fees other than agreed to and pre-approved in writing by LifeScan.

## 11.5 CONFIDENTIALITY

Except as provided herein, all written or verbal information disclosed by LifeScan shall be considered confidential. Only information that LifeScan has marked for disclosure, is available via LifeScan's Websites, or is available through public record, shall be considered non-confidential. This Policy is in addition to and does not replace or supersede any existing non-disclosure or confidentiality agreements between or among LifeScan and Customer.

## 11.6 TAXES

All applicable taxes, duties, customs or excise duties or other fees of any nature imposed on any transaction between LifeScan and its Customers by provincial, federal, or international authority will be added to the price of Products and will be the responsibility of the Customer unless the Customer is exempt and has provided evidence of its exemption such as an exemption number to LifeScan.

Customer bears sole responsibility for payment and/or collection from its own customers in accordance with any local, provincial, federal, or applicable international laws, rules, statutes or regulations.

## 11.7 AMENDMENTS

LifeScan reserves the right to amend any provisions of this Policy in its sole discretion at any time without prior notice.

## 11.8 WARRANTY

Except as expressly provided for in this Policy and subject to the Customer's right to return goods pursuant to this Policy, all Products supplied to the Customer by LifeScan are provided "as is" and LifeScan makes no express or implied warranty or condition of any kind including, but not limited to, that of merchantability or fitness which extends beyond that warranty or condition specifically set forth above and none shall be implied by law. The above warranty or condition is in lieu of any and all other warranties or conditions, whether they be express, implied or statutory, including, but not limited to, the warranties or conditions of merchantability and suitability for fitness for particular purpose or use.

In no event shall LifeScan be liable to the Customer for delays, shortage of Products, loss of profits, or any other direct, indirect, incidental, special, or consequential damage of any nature or kind due to any cause whatsoever including loss of anticipated profits or loss from business disruption, non-acceptance of orders, negligence or failure to deliver Products.

## 11.9 TRADE-MARKS

LifeScan grants to the Customer the limited non-exclusive right, in respect of the Products, to display the trade-marks used or owned by LifeScan, (the "Trade-marks") in Canada, only in the following manner:

- (i) the Trade-marks may be displayed for the purposes of advertising, marketing and promoting the distribution and sale of the Products, only in respect of Product

purchased from LifeScan and only to the extent such activities are being provided by the Customer; and

- (ii) the Trade-marks may be displayed on the Customer's letterhead, invoices, vehicles and signs located at its place of business.

The Customer shall display the Trade-marks only in such a manner as is prescribed from time to time by LifeScan. All advertising, marketing and promotional materials bearing the Trade-marks must be reviewed and approved in writing by LifeScan before they can be distributed or used. Whenever the Customer displays the Trade-marks the Customer shall clearly indicate that LifeScan or its Affiliates are the licensees or owners of the Trade-marks and that the Customer is displaying the Trade-marks with the permission of LifeScan.

It is understood that the Trade-marks of LifeScan and those of its Affiliates shall remain their exclusive property and no rights therein are hereby passed to the Customer. Notwithstanding the provisions of the immediately preceding sentence, the Customer shall immediately report to LifeScan any and all infringements or apparent or suspected infringements of any of the Trade-marks and shall at the request and expense of LifeScan do whatever may lawfully be done to assist in the protection and preservation of the rights of LifeScan and of its Affiliates.

#### 11.10 INDEMNIFICATION BY CUSTOMER

Customer shall indemnify and hold LifeScan and its Affiliates harmless from and against any and all claims, losses, liabilities, damages, expenses and costs, including reasonable fees of professional advisors, arising out of or in any way connected with:

- (a) any non-compliance by the Customer with the terms of this Policy;
- (b) the marketing, promotion, service, distribution and sale of the Products, including any claims arising out of representations, warranties, promises or commitments (oral or written) made by Customer or its representatives which are not authorized in writing by LifeScan; and
- (c) the negligence and intentional misconduct or fraud of Customer or its representatives.

#### 11.11 MISCELLANEOUS

Customer shall report any change in ownership of Customer or the undertaking of any official position by anyone affiliated with Customer.

Customer shall not use subcontractors, sub-distributors or assign any of its rights or obligations in connection with Products without LifeScan's prior written approval.

Customer and its employees who represent LifeScan and who interact with government officials or health care professionals shall (i) comply with all municipal, provincial and federal lobbying legislation, including maintaining appropriate registrations where applicable and (ii) participate in reasonable training to ensure compliance with this Policy including but not limited to the US *Foreign Corrupt Practices Act*, applicable LifeScan standards including the LifeScan Policy on

Business Conduct and will, as requested, certify on an annual basis that such training has been provided and that Customer is in compliance with any and all applicable lobbying legislation.

Customer and LifeScan agree to cooperate in attempting to resolve any disputes arising under this Policy. However, in the event of any unresolved disputes arising under or related to this Policy, Customer agrees to attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom. This Policy is governed by, and is to be construed under, the laws of the Province of Ontario and the federal laws of Canada applicable therein.