

TERMS AND CONDITIONS

1. GENERAL

- 1.1. In consideration of Optima Healthcare Group ABN 89 566 186 653 (the **Supplier**) supplying goods and/or services (together the **Goods**) to the entity identified in the Client Application Form (the **Customer**), the Customer is taken to have accepted and be bound by these terms and conditions (**Conditions**).
- 1.2. The Conditions apply to the supply of all Goods from the Supplier to the Customer, to the exclusion of any terms or conditions appearing on any document of the Customer.
- 1.3. The Supplier reserves the right to suspend/close credit facilities offered by it to the Customer if the Customer breaches these Conditions, including the authorised credit limit be exceeded by the Customer.

2. PRICE

- 2.1. Unless otherwise agreed in writing, the price of the Goods will be that amount charged by the Supplier to the Customer for the Goods as indicated on any invoice/s provided by the Supplier to the Customer, plus any transportation, freight, postage, packaging, handling, insurance and goods and services tax (where applicable, GST will be charged at the appropriate rate at the date of invoice) (together the **Price**).
- 2.2. In the Supplier's sole discretion, the Supplier reserves the right to change the Price in the event that a variation to the Supplier's quoted price for the Goods is requested by the Customer. Any change in the quoted price will then become the Price for the purposes of these Conditions.

3. OWNERSHIP OF GOODS

- 3.1. Ownership in any Goods delivered by the Supplier to the Customer will not pass to the Customer until the later of:
 - 3.1.1. payment in full from the Customer to the Supplier for the Goods;
 - 3.1.2. payment in full of all monies owing or unpaid by the Customer to the Supplier (including Goods previously supplied);
 - 3.1.3. compliance with these Conditions.
- 3.2. The Customer agrees to store the Goods in good and serviceable condition, and in such a manner as to identify that the Goods remain the property of the Supplier until the conditions in clause 3.1 are met, and the Customer agrees to keep complete records as to the use and sale to third parties of such Goods. The Customer agrees that the Goods be secured, and appropriately insured against any risk, damage and theft.
- 3.3. The Customer will not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Supplier, and will indemnify the Supplier against any charge, lien or other claim thereon.
- 3.4. If the Customer fails to pay the price of the Goods or make good any debts to the Supplier as and when due, or commits any act of bankruptcy, the Supplier may without notice and without prejudice to any of its rights and remedies, recover the Goods from the Customer and/or resell any of the Goods, and may itself, or by its servant or agents, enter upon the Customer's premises or any premises occupied by the Customer for that purpose.
- 3.5. Until such time as ownership of the Goods passes from the Supplier to the Customer, the Supplier may give notice in writing to the Customer to return the Goods or any of them to

the Supplier. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods cease.

- 3.6. All risk of damage and loss of the Goods passes to the Customer on delivery of the Goods. The Customer must obtain insurance that covers the delivery of the Goods.
- 3.7. Notwithstanding paragraph 3.1, with the Supplier's consent, the Customer may on-sell the Goods to a third party on commercial terms in the ordinary course of the Customer's business, before the Price and any debts due to the Supplier have been paid and/or met by the Customer to the Supplier. Such action is on the condition that the Customer agrees to hold the proceeds of the third party sale on trust in a separate bank account for the sole benefit of the Supplier until such time as all monies payable to the Supplier have been paid by the Customer.
- 3.8. Until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other end products, the parties agree that the Supplier will be the owner of the end products.

4. DELIVERY, CLAIMS/RETURNS, CANCELLATIONS AND WARRANTIES

- 4.1. Where the Customer expressly requests the Supplier to leave Goods outside the Supplier's premises for collection, or to deliver the Goods to an unattended location, then all risk of damage and loss of the Goods passes to the Customer at that time. Again it is the Customer's responsibility to ensure the Goods are insured adequately.
- 4.2. Where the Supplier has made (or had made) Goods to specific Customer requirements, then delivery of those Goods shall be deemed to have taken place, and all risk for those particular Goods will pass to the Customer immediately at a time that those Goods are received from any third party by, and/or placed into storage by the Supplier, and the Supplier has notified the Customer of the same. Upon notification it is the Customer's responsibility to ensure that the Goods are insured adequately.
- 4.3. Unless agreed otherwise in writing, prior to delivery, the unloading of Goods is the Customer's responsibility. The Supplier is not responsible for any damage resulting from the unloading of Goods by the Customer, or by anyone on its behalf.
- 4.4. Claims for credit and returns must be made within seven (7) days of the date of invoice, by the Customer quoting the invoice number and date. Returns will not be accepted without prior approval from the Supplier in writing. The Supplier reserves the right to charge the Customer a handling fee of 30% and return delivery costs on all returns.
- 4.5. Cancellations are accepted only if payment of the Price, including any labour and material expended to date of cancellation plus an administration fee of 30%, is paid by the Customer to the Supplier on that date.
- 4.6. Warranty for repair is limited to the manufacturer's time given for parts and ninety (90) days for labour. This applies to any repair work the Supplier performs. It does not apply to any other unrelated fault that may develop within the ninety (90) day period that follows after the Supplier repaired the original problem, and/or does not include improper use or installation of the Goods. This warranty will be void if any service and/or repair is carried out by any party other than the Supplier.

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5. TERMS OF PAYMENT

- 5.1. Payment for Goods pursuant to these Conditions including GST is due thirty (30) days from date of invoice unless otherwise stated in writing by the Supplier. Payment is not deemed to be made until all funds have been cleared.
- 5.2. At the Supplier's sole discretion a non-refundable deposit may be required from the Customer.
- 5.3. After the due date of payment the Supplier may charge the Customer interest on any outstanding amounts payable, calculated on a daily balance, at the reference rate of the Supplier's nominated Banking Corporation plus 2%.
- 5.4. The Customer agrees to pay and reimburse the Supplier on demand for all legal costs, stamp duty or other costs or expenses whatsoever suffered or incurred by the Supplier in respect of the preparation of any agreements, personal guarantees, securities or other documentation, or matters relating to any dispute, as taken by the Supplier to document or secure the provision of credit to the Customer, together with all collection and enforcement costs and expenses which the Supplier may suffer or incur in connection with the supply of Goods or provisions of credit to the Customer (without limitation) including legal costs on a full indemnity basis.

6. CHANGES IN OWNERSHIP

- 6.1. In the event that the Customer, being an individual or partnership, incorporates their business, and the incorporated entity, with the individual or partner as a director, continues to use its previous account with the Supplier, then those persons agree to personally guarantee all monies and debts due and payable to the Supplier. To be clear, if the ownership structure of the Customer's business changes, the Customer and key individuals will remain liable for all monies and debts incurred on its account with the Supplier until such time as the Supplier releases the Customer from such liabilities.

7. LIMITATION OF LIABILITY

- 7.1. The Customer must inspect the Goods on delivery and must within one (1) working day of delivery notify the Supplier in writing of any evident defect/damage, shortage in quantity, or failure to comply with the order for the Goods, description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow the Supplier to inspect the Goods.
- 7.2. The Supplier makes no warranties condition, description or representation in relation to the Goods other than those expressly set out in these Conditions.
- 7.3. The Supplier warrants that:
 - 7.3.1. the Goods will be fit for any specified purpose; and
 - 7.3.2. the Goods will be supplied within a reasonable time.
- 7.4. Subject to sections 64A(2) and 267(4) of the Australian Consumer Law (ACL) the Supplier's liability to the Customer for breach of any warranty contained within this clause 7 is limited to re-supply of the Goods or payment of the cost of re-supplying the Goods.
- 7.5. Subject to clause 7.3, the Supplier is not liable for negligent acts or omissions of the Supplier, its employees, contractors and agents arising out of or in connection with these Conditions.

- 7.6. Notwithstanding anything contained in the preceding sub-clauses, these Conditions do not exclude or limit in any way the application of any statutory provision (including a provision of the ACL) where to do so would:
 - 7.6.1. contravene that statute; or
 - 7.6.2. cause any part of this clause to be void, and the provisions of these Conditions are deemed excluded or modified (as the case may be) to the extent of any inconsistency with such statutory provision.
- 7.7. In the event the Goods are required for a particular purpose, the Customer must clearly specify that purpose in writing and obtain written assurance from the Supplier that the Goods, when supplied, will meet that requirement. In the event the Customer fails to comply with this clause, then the Customer agrees that it did not rely on the skill or judgment of the Supplier in relation to the suitability of the Goods for a particular purpose.
- 7.8. The Supplier shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
 - 7.8.1. The Customer failing to properly maintain or store any Goods;
 - 7.8.2. The Customer using the Goods for any purpose other than that for which they were designed;
 - 7.8.3. The Customer continuing the use of any the Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - 7.8.4. The Customer failing to follow any instructions or guidelines provided by the Supplier; or
 - 7.8.5. Fair wear and tear, any accident or act of God.

8. PERSONAL PROPERTY SECURITIES ACT 2009 (PPSA)

- 8.1. In this clause:
 - 8.1.1. financing statement has the meaning given to it by the PPSA;
 - 8.1.2. financing change statement has the meaning given to it by the PPSA;
 - 8.1.3. security agreement means the security agreement under the PPSA created between the Customer and the Supplier by these Conditions; and
 - 8.1.4. security interest has the meaning given to it by the PPSA.
- 8.2. Upon assenting to Conditions in writing the Customer acknowledges and agrees that these Conditions:
 - 8.2.1. constitute a security agreement for the purposes of the PPSA; and
 - 8.2.2. create a security interest in:
 - 8.2.2.1. all Goods previously supplied by the Supplier to the Customer (if any); and
 - 8.2.2.2. all Goods that will be supplied in the future by the Supplier to the Customer.
- 8.3. The Customer undertakes to:
 - 8.3.1. promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to:
 - 8.3.1.1. register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;

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- 8.3.1.2. register any other document required to be registered by the PPSA; or
- 8.3.1.3. correct a defect in a statement referred to in clause 8.3.1.1 or 8.3.1.2;
- 8.3.2. indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
- 8.3.3. not register a financing change statement in respect of a security interest without the prior written consent of the Supplier;
- 8.3.4. not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Supplier; and
- 8.3.5. Immediately advise the Supplier of any material changed in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 8.4. The Supplier and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these Conditions.
- 8.5. The Customer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 8.6. The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 8.7. Unless otherwise agreed to in writing by the Supplier, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 8.8. The Customer shall unconditionally ratify any actions taken by the Supplier under clauses 8.3 to 8.7.

9. GENERAL

- 9.1. If any provision of these Conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 9.2. These Conditions and any contract to which they apply shall be governed by the laws of Victoria and are subject to the jurisdiction of the courts of Victoria.
- 9.3. The Supplier shall be under no liability whatsoever to the Customer or any third party for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer or third party arising out of a breach by the Supplier of these Conditions.
- 9.4. In the event of any breach of these Conditions by the Supplier the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 9.5. The Supplier reserves the right to at any time, to set-off all monies, then or contingently owed to the Supplier by the Customer against any debt the Supplier may owe to the Customer. The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.
- 9.6. The Supplier may license or sub-contract all or any part of its rights and obligations without the Customer's consent. The Customer may not assign, subcontract or otherwise transfer any right or liability under these Conditions without the Supplier's prior written consent.
- 9.7. The Customer agrees that the Supplier may review and change these Conditions, then that change will take effect from the date on which the Supplier made such changes. The Customer shall be under no obligation to accept such changes except where the Supplier supplies further Goods to the Customer and the Customer accepts such Goods.
- 9.8. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 9.9. The failure by the Supplier to enforce any provision of these Conditions shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision.
- 9.10. If any payment made under or relating to these Conditions constitutes consideration for a taxable supply for the purposes of GST or any similar tax, the amount to be paid for the supply will be increased so that the net amount retained by the supplier after payment of that GST is the same as if the supplier was not liable to pay GST in respect of that supply.
- 9.11. These Conditions expresses and incorporates the entire agreement between the parties and supersedes any prior negotiation, understanding, communication or agreement between the parties.
- 9.12. Each party must execute any document and perform any action necessary to give full effect to these Conditions, whether before, or after performance of these Conditions.
- 9.13. The provisions of these Conditions do not merge with any action performed or document executed by any party for the purposes of performance of these Conditions. Any representation in these Conditions survives the execution of any document for the purposes of, and continues after, performance of these Conditions. Any indemnity agreed by any party under these Conditions constitutes a liability of that party separate and independent from any other liability of that party these Conditions or any other agreement and survives and continues after performance of these Conditions.
- 9.14. Upon acceptance of these Conditions by the Customer the Conditions are binding and can only be amended with the written consent of the Supplier. The Conditions constitute the entire agreement of the parties and may not be varied without the prior written agreement of the Supplier.
- 9.15. If any provision of these Conditions are held to be invalid or unenforceable in any way the remaining provisions will not be affected and these Conditions will be construed so as to most nearly give effect to the intentions of the parties at the time it was executed.