

## TERMS AND CONDITIONS OF TRADE

If the Customer does not have prior written terms of trade with the Supplier the following shall apply:

### Interpretation

"GST" means Goods and Services Tax applicable in Australia.

"The Customer" where the context so permits shall include the customer named on this invoice.

"The Supplier" means Superior Healthcare Australia Pty Ltd (ABN 28 088 222 299)

The Customer agrees to comply with the trading terms of Superior Healthcare Australia Pty Ltd (ABN 28 088 222 299) ("the Supplier") as prescribed herein.

### 1. Sales Orders

- 1.1 The Supplier may either accept or decline any order for goods by the Customer in whole or in part in the Supplier's absolute discretion.
- 1.2 The Customer may not cancel any order or refuse to accept delivery of goods ordered unless with the Supplier's consent is first obtained. In the event that the Customer attempts to cancel any order or refuse delivery the Supplier may take steps to recover the full invoice amount including any delivery costs and GST.

### 2. Delivery and Risk

For Melbourne Metropolitan orders placed by 3.00 p.m. the Supplier will generally deliver the next business day and for all other orders delivery times shall be confirmed following receipt of order but notwithstanding the following terms shall prevail:

- 2.1 Unless otherwise agreed in writing the Customer authorises the Supplier to arrange for delivery of any goods ordered at the Customer's expense and in the event that the Supplier decides to pay such costs the Customer agrees to reimburse the Supplier the full amount incurred or paid by the Supplier upon demand.
- 2.2 Risk passes to the Customer upon despatch of goods from the Supplier's premises.
- 2.3 The Customer shall inspect goods immediately once they are received. The Seller will accept no liability for any claim made regarding the goods unless notified to the Supplier in writing strictly within seven (7) days from delivery to the Customer's possession.
- 2.4 Any delivery dates provided by the Supplier are only estimates in good faith and time shall not be of the essence in this regard.
- 2.5 The Supplier shall not be liable for any delay in delivery due to causes beyond the Supplier's reasonable control including acts of god, act of civil or military authority, fire, strike, flood, epidemic, quarantine restriction, war, riot, civil commotion, acts of the Customer or any delay in transportation. In the event of delay due to such causes the date of delivery shall be extended for a period equal to the time lost by reason of any such delay.
- 2.6 To the maximum extent permitted by law the Supplier's liability for any delay or non-delivery is excluded but is otherwise limited to the supply or replacement of the goods or equivalent goods (at the Supplier's option) within a reasonable time.
- 2.7 The Customer agrees to indemnify the Supplier against any claims for injury or death or loss or damage to any property arising out of or in connection with the supply of any goods by the Supplier.
- 2.8 The Supplier submits any proposal/quotation and the Customer orders the goods subject to the following rights reserved by the Supplier:-
  - (a) Price Variations - the Supplier shall be entitled to vary the prices quoted in the event of:-
    - (i) Fluctuations in the value of the Australian Dollar or changes in the rates of taxes and duties affecting the costs of supply of the goods between the date this quotation/invoice was submitted to the Customer and the date the goods are delivered;
    - (ii) Changes in the product specifications without prior notice to the Supplier resulting in a variation in the costs of acquiring the goods.
    - (iii) Request by the Customer for the supply of the items in non-standard packs or in quantities less than the minimum quantities advised by the Supplier.
  - (b) Correction of errors or omissions on invoices and credit notes, if applicable.
  - (c) Recision of this agreement in the event of:-
    - (i) The non-availability of any goods or any raw materials required by the Supplier within thirty (30) days from the date of acceptance by the Customer;
    - (ii) Amendments to the product specification by the Supplier's supplier without prior notice to the Supplier resulting in the goods being unsuitable for the Customer's purposes.
- 2.9 Any quotation provided by the Supplier to the Customer shall be valid for a period of fourteen (14) days.

### 3. Payment Terms

- 3.1 The Customer shall pay to the Supplier the full amount of all amounts invoiced to the Customer (including any GST, transport, freight, delivery, service, hiring or finance fees or charges) strictly upon invoice and the Customer hereby waives any right to set-off any amount which the Customer at any time claims is due and owing by the Supplier to the Customer.
- 3.2 In the event that the Customer fails, refuses or neglects to pay any amounts strictly within the agreed terms of trade:-
  - (a) The Supplier may in its discretion repossess the invoiced goods and proceed to recover any balance then remaining.
  - (b) The Customer shall be liable to pay to the Supplier monthly interest at the rate of 1.5% per month until the invoiced amount has been paid to the Supplier in full.
  - (c) The Customer shall pay or reimburse to the Supplier all recovery costs paid or payable by the company of whatever nature including (but not limited to) legal costs on a solicitor/own client basis, mercantile costs (including any fees, expenses, disbursements and/or commissions at a rate not exceeding a maximum of 15% of the total debt amount), accountancy fees, bank charges, statutory or government fees, stamp duty, search costs or other disbursements together with interest upon the above accruing at the rate of current bank overdraft rates on a monthly basis.
- 3.3 The Customer hereby pledges and charges all the freehold and leasehold interest in land and also all personal property held by the Customer of which the Customer is now possessed and which the Customer may hereafter acquire (the pledge and charge attaching ipso facto from the point of acquisition) with payment of all monies due and owing from time to time to the Supplier (including all recovery, mercantile and collection costs and commissions). The Customer further agrees that immediately upon demand by the Supplier so to do the Customer will execute and deliver to the Supplier such Bill of Mortgage, Bill of Sale, Corporation Mortgage Debenture or other like instrument or consent to such Caveat as the Supplier shall require to be executed and delivered or consented to by the Customer and in the event that the Customer shall neglect or fail to do so or alternatively in the event that the Supplier chooses in its sole and unfettered discretion so to do the Customer HEREBY IRREVOCABLY APPOINTS the Supplier an/or any Manager, Secretary, Credit Manager or Solicitor of the Supplier to be the lawful attorney of the Customer for the purpose of executing and registering such instrument and/or executing a consent on behalf of the Customer to any Caveat required by the Supplier and any such Attorney may act according to the terms hereof without being liable for any cause whatsoever.

### 4. Ownership of Goods

#### 4.1 Retention of Title

Property and title in Goods supplied under these conditions does not pass to the Customer until payment in full by the Customer is received by the Supplier in relation to such Goods and in relation to all other amounts owing to the Supplier by the Customer on any account whatsoever, until which time (subject always to clause 4.3):-

- (a) the Customer must not deal with any Goods to which the Supplier retains property and title in accordance with this paragraph 4 ("Retained Goods") in any way inconsistently with the rights and interest of the Supplier as owner thereof; and
- (b) the Customer must hold the Retained Goods as fiduciary bailee and agent for the Supplier, and the Customer must store the Retained Goods in such separate place and in such manner such that the Retained Goods are capable of being clearly identified as the Property of the Supplier.

#### 4.2 Possession of Retained Goods

Upon demand by the Supplier, which demand may be made at any time upon the Customer defaulting in any of its obligations under these conditions, the Customer must deliver all Retained Goods to the Supplier or as otherwise directed by the Supplier. The Supplier may enter upon any premises under the Customer's control (whether occupied or not) for the purpose of recovering any Retained Goods the subject of a demand made in accordance with this paragraph and, in so entering upon such premises, the Supplier and its authorised representatives may use all reasonable force to obtain such possession and will not be trespassers. Further or in the alternative the Supplier may take copies of or extracts of the Customer's records pertaining or apparently pertaining to any goods supplied. The authority to so enter premises is given by the Customer irrevocably.

#### 4.3 Sale of Retained Goods

The Customer may in the ordinary course of business, sell Retained Goods on behalf of the Supplier or mix or combine Retained Goods with other goods in the course of a manufacturing process and sell the product or products thereof ("Products"), in which case the Customer must:-

- (a) keep separate records of all sales of such Retained Goods or Products;
- (b) account to the Supplier for all proceeds of the sale of such Retained Goods or Products (as applicable); and
- (c) keep a part of such proceeds equal to the total amount outstanding to the Supplier in relation to all Retained Goods in a separate account on trust for the Supplier and not to mix them with any other monies (including funds of the Customer) other than with other monies held on trust by the Customer for the Supplier.

### 5. Demand/Notices

A statement signed for or on behalf of the Supplier by the Supplier's Manager, Director or the Supplier's accountant or solicitor sent by ordinary post to the Customer's last known address, shall be sufficient evidence at all times of the amount due to the Supplier by the Customer.

### 6. Default

If at any time:-

- (a) a sequestration order is made affecting the property of the Customer;
- (b) the Customer executes an authority to a trustee under Section 188 of the Bankruptcy Act;
- (c) the Customer commits any act of bankruptcy;
- (d) any petition is issued or resolution passed for winding up of the Customer, or if the Customer is struck off the official register of companies;
- (e) a receiver, manager, receiver and manager or provisional liquidator is appointed to the whole or part of the undertaking of the Customer;
- (f) an official manager and/or administrator under the Corporations Law is appointed to the Customer;
- (g) the Customer ceases to trade or carry on business in the usual manner or suffers its builders licence (if any) to be cancelled or restricted;
- (h) the Customer defaults in duly and punctually paying when due any amount owing to the Supplier hereunder;
- (i) without the prior written consent of the Supplier, the Customer reduces its share capital, or attempts to do so,
- (j) any judgment, execution or other process of any Court or authority is issued against the Customer;
- (k) the Customer suspends payment generally, or ceases or threatens to cease to carry on its business, or is unable to pay its debts as they fall due;
- (l) without the prior written consent of the Supplier the Customer assigns, disposes of or parts with possession of the whole or a substantial part of its undertaking or assets or attempts to do so;
- (m) the Customer being a corporation, if any person or persons who between them beneficially hold or control, directly or indirectly, at the date hereof more than fifty per cent (50%) of the voting, income and/or capital participation rights therein subsequently ceases to hold or control, directly or indirectly, more than fifty per cent (50%) of such rights, without the prior written consent of the Supplier;

then notwithstanding the waiver of any previous default, there shall be deemed to have happened an event of default and the whole of any monies then outstanding to the Supplier from the Customer shall thereupon become due and payable immediately although any time otherwise appointed thereof may not have arrived and forthwith upon the determination of an event of default the Customer will pay all such monies outstanding to the Supplier forthwith and without demand.

### 7. Ownership

This agreement is made with the owners and/or directors of the Customer as at the date of application. The Customer shall notify the Supplier in writing within seven (7) days of any change whatsoever in ownership structure and, further, hereby indemnifies the Supplier against any loss or damage that may result from the Customer's failure to notify the Supplier of any such change.

### 8. Trustee Provisions

In the event that the Customer enters into this Agreement as a trustee of any trust:-

- (a) The Customer shall be personally liable for performance of all terms, covenants, conditions and obligations herein contained.
- (b) The Customer warrants that it has full, complete and valid authority pursuant to the Trust to enter into this Agreement.
- (c) The rights of recourse of the Supplier shall not be limited to the Customer personally and the assets of the Customer but shall extend to relevant Trust assets.
- (d) The Customer hereby charges all rights of indemnity which the Customer has or will have from time to time against the Trust fund or Trust property and covenants that such rights of indemnity have not been excluded by the provisions of the Trust or by any breach of Trust or otherwise and that the Customer will not release or otherwise prejudice such rights of indemnity.
- (e) The trustee or trustees of the Trust shall not be altered (save upon death of a trustee) unless the Supplier has been given written notice of and has consented to such alteration PROVIDED THAT such consent shall not be unreasonably withheld.
- (f) None of the following powers shall be exercised by the trustee unless the Supplier is given written notice of and consents to such exercise PROVIDED THAT such consent shall not be unreasonably withheld:-
  - (i) any power to alter or vary the trustee or trustees of the Trust whether by resignation, appointment or otherwise;
  - (ii) any power to advance or distribute capital or income;
  - (iii) any power to vary the terms of the Trust;
  - (iv) any power to resettle or vest the Trust property;
  - (v) any power to add any beneficiaries to the Trust.
- (g) Any breach of trust by the trustee shall constitute a breach of this Agreement entitling the Supplier to exercise all such rights and remedies upon default as are contained in this Agreement or otherwise conferred by law.
- (h) The Customer warrants that it has either secured or has had the opportunity to secure advice from solicitors familiar with the terms of the Trust that such terms create no impediment to the granting of the covenants in this clause nor create any reason why the covenants in this clause should be ineffective.

### 9. Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of the State of Victoria and:-

- (a) The Supplier shall have the exclusive right to nominate the Court in which any legal action is to be commenced; and
- (b) The Customer shall consent to a permanent stay of any proceedings which may have been commenced by the Customer in a Court not nominated by the Supplier.

### 10. Severance

Each clause or sub-clause of this Agreement is severable from the others and if any part is invalid or unenforceable for any reason such invalidity or unenforceability shall not affect in any way the validity or enforceability of any other party.