

Terms and Conditions of Sale PHARMA PAC LIMITED (“Pharmapac”)

1. SUPPLY

Pharmapac Agrees to supply Personal Property (as defined in the Personal Property Securities Act 1999 (“PPSA”)) (“Goods”) to customers on the terms and conditions set out below (“the Contract Terms”) whether such Goods are supplied prior to or at the time of acceptance of these Contract Terms or any time in the future.

2. GENERAL

- a. The Contract Terms include all those statutory rights conferred on the Customer which Pharmapac is not capable of excluding, restricting or modifying (“the Customer’s statutory rights”).
- b. Unless other terms are accepted in writing by Pharmapac, the Contract Terms shall apply to the exclusion of all prior discussions, representations, understandings and arrangements, and all conditions and warranties (written or oral, express or implied) and other representations (contractual or otherwise):
 - i. whether or not arising under statute, by implication of law or by custom or usage, and
 - ii. whether or not endorsed or delivered with or referred to in any order or other document delivered by the Customer to Pharmapac, with respect to the supply of Goods.
- c. Notwithstanding the above, these Contract Terms shall, for the purposes of the PPSA, include any accepted quotation, order or other correspondence but only insofar as it described Goods to be supplied to the Customer by Pharmapac or indicates the Customer’s assent to these Contract Terms.
- d. In these Contract Terms, headings are for convenience only and do not affect their interpretation.

3. PRICES

- a. Prices are exclusive of GST or any other taxes, insurance and freight. Any price lists supplied by Pharmapac are subject to change at any time without notice.
- b. Unless otherwise expressly stated, all prices shall

be on an ex-warehouse basis. If Pharmapac is to be responsible for arranging transportation, the cost of transportation will be charged to the Customer by way of addition to the contract price.

- c. The prices charged will be those ruling at the date of despatch of the Goods. Price lists are not an offer. All prices are subject to change without notice.

4. TERMS OF PAYMENT

- a. Goods are to be paid for in full on or before the 20th of the month following invoice (“due date”).
- b. All payments received will be credited against the relevant invoice to the Customer for the Goods supplied. All payments due to Pharmapac must be made in full without deduction, set off or counter-claim.
- c. Pharmapac may withhold the supply of further Goods not withstanding that Pharmapac have accepted further orders if any payment due by the Customer is unpaid at due date.
- d. If the Customer defaults in making payment on due date interest calculated on a daily basis shall be payable on the amount outstanding until payment is received by Pharmapac and for periods both before as well as after any judgement. Default interest shall be 2% per annum above the rate charged Pharmapac by its trading bank for overdraft accommodation.

Payments made to Pharmapac will be applied first in payment of interest and secondly, in reduction of invoiced amounts. Pharmapac’s requirement for default interest to be paid is without prejudice to Pharmapac’s other rights or remedies in respect of the Customer’s default in making payment on the due date.
- e. In the event of default in payment due to Pharmapac by the Customer, the Customer will pay Pharmapac all costs arising from or consequent on enforcement and or collection of money due and owing, including legal costs on a solicitor and client basis.

5. DELIVERY

- a. (Delivery shall be made at the place and time indicated in the Pharmapac invoice or as otherwise mutually agreed between Pharmapac and the Customer and delivery shall be deemed completed when so delivered.
- b. Unless otherwise agreed in writing the time of delivery shall not be of the essence.
- c. Pharmapac reserves the right to deliver the Goods by installments and each installment shall be deemed a separate contract on the same terms and conditions as this contract.
- d. Pharmapac will endeavour to deliver the Goods, within the time agreed (if any) or within a reasonable time (in the absence of agreement), but shall not be liable for any loss or damage of any kind whatsoever caused directly or indirectly by any delay in delivery, supply or completion or failure to deliver, supply or complete. If delay or failure is caused by force majeure or labour dispute Pharmapac may suspend delivery, supply or completion and /or terminate the contract. “Force majeure” means an act of God, war, lightning, fire, earthquake, storm, flood, explosion, unavailability or delay in availability of equipment, materials or transport, and any other cause whether of the kind specifically enumerated or otherwise which is not within the control of Pharmapac.
- e. If the customer fails or refuses to take delivery of any Goods Pharmapac may (without prejudice to its other rights and remedies) charge the Customer for any additional expense incurred.
- f. All claims for short orders or errors must be made in writing to Pharmapac within 10 days after the delivery of the Goods.
- g. Pharmapac reserves the right to:
 - i. Suspend the supply of any order in whole or in part or to discontinue the supply of the Goods without incurring any liability whatsoever and without being obliged to give any reason for its action; and/or
 - ii. Make part delivery of any order and each part

delivery will constitute a separate contract.

6. RETURNS

To ascertain that the Goods conform with the contract the Customer shall examine the Goods forthwith upon delivery. The Customer shall be deemed to have accepted the Goods unless the Customer within 10 days from delivery (exclusive of the day of delivery) gives written notice to Pharmapac rejecting the Goods.

7. FURTHER SECURITY

Pharmapac may at any time require the Customer to provide security for payment of Goods supplied or to be supplied and without limitation may call for guarantees from the Customer and if applicable its directors and shareholders and take security in support of those guarantees.

8. TITLE TO GOODS

- a. Property in the Goods supplied will not pass to the Customer until such time as payment for all Goods, and other amounts owing by the Customer to Pharmapac have been paid in full, and until then the Customer will be a bailee of all such Goods.

Until title to and property in the Goods passes to the Customer:

- i. The Customer will keep Pharmapac informed as to the whereabouts of the Goods and will not, other than in the Customer’s ordinary course of business part with possession, sell or otherwise dispose of any of the Goods or any part of them or attempt to deal with them in any way whatsoever; and
- ii. Pharmapac will be entitled (in accordance with the PPSA) to enter the Customer’s premises and any other premises in respect of which the Customer has a right of entry, for the purpose of seizing, repossessing and removing the Goods at any time if, in Pharmapac’s opinion, payment of any Goods is unlikely to be made or if payment for any Goods has not been made by the due date, or a liquidator, receiver or statutory manager has been appointed in respect of the Customer or the Customer proposes to enter into a compromise or scheme or

arrangement with its creditors. If Goods are stored or held at any premises to which the Customer has a right of access, then the Customer will before delivery of the Goods to these premises notify the person or persons entitled to possession of such premises of the rights of Pharmapac under these terms and conditions. The Customer will not place the Goods in any premises where Pharmapac's rights under these terms and conditions are not consented to by the person in possession thereof. Pharmapac, its servants or agents will not be liable for any loss or damage whatsoever incurred as a result of seizure, repossession or removal of the Goods from any premises pursuant to this clause.

iii. For the purposes of this clause if payment is made other than in cash, payment shall not be deemed to have occurred until such time as the order or instruction for payment has been unconditionally cleared by Pharmapac's bankers. Until such time as payment has been made and cleared, the Customer shall, by separate storage at premises of the Customer, ensure that the Goods are readily identifiable as the Goods of Pharmapac and shall keep the Goods as bailee for and on behalf of Pharmapac.

b. Notwithstanding that the property in the Goods is retained by Pharmapac, the Customer is hereby authorised to use/or sell the Goods in the ordinary course of its business PROVIDED THAT such authority may be revoked by written notice from Pharmapac at any time if Pharmapac deems the credit of the Customer to be unsatisfactory or if the Customer is in default in the performance of its obligations under these terms and conditions or any other contract between Pharmapac and the Customer, and shall be deemed revoked with or without notice if the Customer shall suffer any distress or execution in respect of any of its assets; or any judgement remains unsatisfied; or the Customer enters into any scheme of arrangement with creditors; or being a company a receiver is appointed in respect of any of the Customer assets, or a resolution is passed to wind up the Customer, or petition is filed to wind up the Customer, or the Customer is placed in statutory management

or declared to be at risk pursuant to the Corporations (Investigation and Management) Act 1989; or (being an individual) the Customer commits an act of bankruptcy or is declared bankrupt.

c. (Where Goods in respect of which property has not passed to the Customer are used by the Customer pursuant to the authority granted at Paragraph 8(b) and book debt created upon the sale of the Goods or product of the Customer which includes the Goods and the proceeds of the sale of the Goods or product of the Customer which includes the Goods and the proceeds of sale of the goods or that Customer product, when received by the Customer shall be held upon trust by the Customer for Pharmapac and placed in a bank account separate from the Customer's trading account and the proceeds of sale shall first be applied toward the satisfaction of indebtedness of the Customer to Pharmapac.

d. If payment is not made within the terms of any demand in writing made by Pharmapac or Pharmapac revokes or is deemed to have revoked the Customer's authority to use and/or sell in the manner described in the proviso to paragraph 8(b) Pharmapac may in addition to and without prejudice to any other rights and or remedies available to Pharmapac, without notice immediately repossess the Goods. For such purpose the Customer hereby irrevocably authorizes and grants a license to Pharmapac to enter the premises where the Goods are stored to retrieve those Goods.

9. RISK

a. Risk in the Goods (including any loss, damage or deterioration and whether to be delivered ex warehouse, to the Customer's premises or in any other manner) passes to the Customer immediately when the Goods leave Pharmapac's premises. Delivery of the Goods to the Customer's agent, carrier or representative shall constitute delivery to the Customer.

b. Until ownership and property in the Goods passes to it, the Customer will take due and proper care of the Goods, and the Customer shall keep the goods insured against all usual risks for the full insurable

value and will produce to Pharmapac upon demand such evidence as Pharmapac may require to confirm the existence and currency of such insurance. If the Customer defaults in the performance of its obligations under this clause, Pharmapac shall be entitled to insure the Goods and the cost of effecting such insurance shall be payable by Customer to Pharmapac upon demand.

c. If any of the Goods are damaged or destroyed prior to the ownership and property therein passing to the Customer, Pharmapac shall be entitled, without prejudice to any of its other rights or remedies to receive all insured proceeds which are payable in respect thereof (whether or not the purchase price of such Goods has become payable) and the production of the contract by Pharmapac shall be sufficient evidence of Pharmapac's right to receive payment of such insurance proceeds without the need for further inquiry by any person dealing with Pharmapac. Any such insurance proceeds shall be applied by Pharmapac in payment of the purchase price of the Goods which are damaged or destroyed, if unpaid.

10. PRODUCT INFORMATION

Any information given by Pharmapac to the Customer as to the suitability or otherwise of the Goods for a particular use is given as general advice only and Pharmapac accepts no responsibility for the accuracy or otherwise of that information. The Customer in entering into this contract acknowledges that it has not relied on the information provided by Pharmapac and waives any right to make a claim against Pharmapac relating to that information. The Customer shall be responsible for making its own inquiry or undertaking its own tests as to the suitability of the Goods for the use the Customer intends to put those Goods.

11. STATUS SHEETS

The Customer acknowledges that Pharmapac cannot make its own inquiry as to the makeup of raw material content or componentry of the Goods and has to rely on the information provided by Manufacturers. Pharmapac collates manufacturers raw material content and component information in the form of status sheets for the benefit of the Customer but accepts no liability for the accuracy or otherwise of that information. The Customer expressly

waives any right it may have to make a claim against Pharmapac for the accuracy or otherwise of the information provided.

12. INTELLECTUAL OR INDUSTRIAL PROPERTY RIGHTS, MOULDS, DIES, TOOLS

a. In the event that the Customer requires Pharmapac to produce the Goods to a particular specification (“Customer Specification”) other than a specification at the time produced by Pharmapac then:

i. The Customer warrants that the production of Goods by Pharmapac to the Customer Specification shall not infringe any intellectual or industrial property rights of any third party and Customer shall indemnify Pharmapac in respect of any claim of or arising from any infringement or alleged infringement including Pharmapac's cost in defending such a claim.

ii. The Customer shall be solely responsible for all or any dies, tools or other items provided by Pharmapac for the purpose of producing Goods to the Customer Specification and Pharmapac accepts no liability for any loss or damage thereto. Pharmapac shall be entitled to retain any of Customer's dies, tools or other items until such time as the Goods have been paid for and, in the event of non-payment within two months of due date for payment, to sell (after giving one week's notice of Pharmapac's intention to sell) by auction, (including by on-line or similar auction), and

iii. Pharmapac shall be entitled to charge in addition to the price of the Goods a fee for development of any Goods to Customer specification. Property in all designs, sketches, specifications and all dies, tools and other manufacturing items developed by Pharmapac for production of Goods to the Customer Specification shall be and shall remain the property of Pharmapac.

b. With respect to Pharmapac Goods being Goods in which Pharmapac has rights or is entitled to have rights in the industrial or intellectual property of those Goods the Customer warrants that it will not infringe or bring

Terms and Conditions of Sale PHARMA PAC LIMITED (“Pharmapac”)

any competing claim against Pharmapac’s interest therein.

13. CONSUMER GUARANTEES ACT

- a. If the Customer enters, or holds itself out as entering, into this Contract for the purposes of a business and the exception set out in section 43(2) of the Consumer Guarantees Act 1993 applies to the Customer, then Pharmapac disclaims all warranties, conditions and representations, whether express, implied or statutory (save for those warranties set out in clause 7.1) including but not limited to warranties of title, non-infringement, merchantability, fitness or suitability for a particular purpose freedom from defects or otherwise with respect to the Goods.
- b. The Customer shall not, in relation to the supply by the Customer of the Goods, give or make any undertaking, assertion or representation in relation to the Goods without the prior approval in writing of Pharmapac and the Customer shall indemnify Pharmapac against any liability or cost incurred by Pharmapac as a result of any breach by the Customer of this provision.
- c. Where the Customer supplies any of the Goods to another person who acquires them for business purposes, it must be a term of the Customer’s contract with that person that the Consumer Guarantees Act 1993 does not apply to the supply of the Goods. The Customer shall indemnify Pharmapac against any liability or cost incurred by Pharmapac under the Consumer Guarantees Act 1993 as a result of any breach by the Customer of this provision.

14. PRIVACY ACT 1993

- a. The Customer authorises Pharmapac to collect information about the Customer from any other person and to use or disclose any information it holds about the Customer (whether now or in the future) for any purpose relating to the usual business functions and activities of Pharmapac, including credit checking and debt collection.
- b. The Customer authorises any third party to provide Pharmapac with any information about the Customer which Pharmapac may require for any purpose

relating to the usual business functions and activities of Pharmapac including credit checking and debt collection.

- c. If the Customer is an individual, the Privacy Act 1993 entitles the Customer to have access to personal information held by Pharmapac about the Customer and to request correction of that personal information if necessary.

15. PERSONAL PROPERTY SECURITIES ACT 1999 (“PPSA”)

- a. Notwithstanding anything to the contrary contained in these Contract Terms the parties agree that for the purposes of the PPSA:
 - i. These Contract Terms shall constitute a Security Agreement; and
 - ii. Pharmapac is the Secured Party and has a purchase money security interest (“a PMSI”) in all present and future Goods supplied by Pharmapac to the Customer and Pharmapac’s security interest shall extend to the proceeds arising from such (including accounts receivable); and
 - iii. Whenever Pharmapac asks the Customer to do anything to better secure any Goods which secures or is intended to secure the supply of Goods from Pharmapac the Customer must do it immediately at its own cost; and
 - iv. The Customer agrees that Pharmapac may take whatever action it thinks appropriate to ensure it has first priority in the Goods and agrees to indemnify Pharmapac for any costs it incurs in doing this; and
 - v. The Customer waives any rights to receive a copy of the verification statement under section 148 of the PPSA and agrees, to the extent permitted by law, and in respect of any arrangement between the Customer and Pharmapac:

- The Customer shall have no rights under (or by reference to) section 114 (1) or 133 of the PPSA;

- The provisions of part 9 of the PPSA which are for the benefit of the Customer or place obligations on Pharmapac shall apply only to the extent that either they are mandatory or Pharmapac agrees to the application; and
- Where Pharmapac has rights in addition to those in part 9 of the PPSA those rights shall continue to apply.

- b. The Customer must immediately upon request by Pharmapac procure from any person considered by Pharmapac to be relevant to its security position such agreements and waivers (including as equivalent to those above) as Pharmapac may at any time require.
- c. The Customer warrants that information provided to Pharmapac relevant to registration and maintenance of Pharmapac’s security position is true and correct. Furthermore, the Customer will notify Pharmapac, where such information changes.
- d. The Customer shall not change its name without giving prior written notice to Pharmapac of the new name. The Customer shall not relocate its principal place of business or move any of the Goods outside New Zealand.
- e. The Customer must in addition to any other obligation indemnify Pharmapac for any costs Pharmapac incurs in registering or maintaining and/or enforcing or attempting to enforce the security interest created by those Contract Terms.
- f. Incorporated in this Security Agreement are all items contained in the Memorandum of General Terms and Conditions published by the Auckland Law Society under reference 6302 and registered with Land Information New Zealand under reference “Sup Doc 704455. A copy of this is also available from Pharmapac on request.

16. DAMAGE

If the Customer is proven at law to have a valid claim for damages against Pharmapac (it being the intention that

no such damages may be incurred) those damages will be limited to the cost of repair, replacement or resupply of the Goods, whichever is the lesser. Under no circumstances will Pharmapac be liable for any loss or damage resulting from loss of profits, data or use of the goods, services or advice purported to be given by or on behalf of Pharmapac, or for any other indirect, special or consequential loss or damage.

17. FORCE MAJEURE

Pharmapac shall not be liable in any way whatsoever for failure to comply with the terms of the contract which failure is due to circumstances beyond the reasonable control of Pharmapac.

18. GOVERNING LAW

- a. The Contract and these terms of trade are governed by, and shall be construed in accordance with, the laws of New Zealand.
- b. The Customer submits to the exclusive jurisdiction of the courts of New Zealand in respect of all matters arising out of the Contract and these terms of trade.

19. INTERPRETATION

- a. For the purpose of these terms and conditions of sale “Contract” means the contract between Pharmapac and the customer for the sale and purchase of Goods.
- b. Failure by Pharmapac to enforce any of the Contract Terms shall not be construed as a waiver of any of Pharmapac’s rights hereunder or a waiver of continuing breach.
- c. Pharmapac and the Customer each acknowledge that these terms and conditions express the entire understanding and agreement between them and that there have been no representation made by either party to the other except as expressed in these terms and conditions. If there is any inconsistency between these Contract Terms and any order that may be lodged by the Customer then these Contract Terms will prevail.