

## TERMS AND CONDITIONS OF SALE

### 1. ORDERS

- 1.1 The Supplier reserves the right to accept or decline, in whole or in part, any order placed by the Purchaser.
- 1.2 Orders must conform to the lot size specified on the Supplier's price list as at the time of the order. The Supplier will round orders up or down to conform with the nearest lot size multiple.
- 1.3 The Supplier will provide two freight free deliveries per calendar month. The two freight free deliveries per calendar month apply only in respect of deliveries where the total order value exceeds \$750 excluding GST. All other orders will incur a \$75 transaction fee. If an order relates to any Goods temporarily out of stock, the Supplier will supply such Goods when stocks become available unless the Purchaser specifically instructs otherwise before such Goods are shipped to the Purchaser.
- 1.4 Subject to clause 9 and stock availability, the Supplier will endeavour to dispatch orders received (i) prior to midday, on the day the order is received if that day is a business day, or the next business day if that day is not a business day, and (ii) orders received after midday, on the next business day.
- 1.5 The Purchaser must obtain all necessary licences and comply with all applicable laws and regulations relating to the supply of the Goods.

### 2. EXPORT PROHIBITION

- 2.1 Unless otherwise agreed in writing by the Supplier, the Goods are for sale and use only in New Zealand. Without limiting the foregoing, the Purchaser must not at any time, directly or indirectly, sell, use or export the Goods outside New Zealand or sell or give Goods to a person who the Purchaser knows, or should reasonably know, intends to sell, transfer or distribute any of the Goods to any person without requiring such person to be bound by this export restriction. Any breach of this clause will preclude the Purchaser from purchasing any further Goods from the Supplier, until such time as the Supplier is satisfied, in its sole discretion, that the Purchaser will not further breach this clause.
- 2.2 Should the Supplier identify any person who is engaged in the exporting of Goods out of New Zealand, the Supplier may preclude the Purchaser from supplying any further Goods to the person by giving written notice to the Purchaser.
- 2.3 Any person who has had their approval to purchase Goods revoked by the Supplier may apply for reinstatement of approval to purchase the Goods, given conditions issued by the Supplier are met.
- 2.4 No licence relating to the Goods, express or implied, is granted under the intellectual property rights existing under laws of the United States or any other jurisdiction outside New Zealand. The Purchaser acknowledges that exporting or permitting the export of any of the Goods outside New Zealand may violate, or cause the Supplier to be in breach of, laws in the United States and/or other jurisdictions to which any such Goods are exported.

### 3. DELIVERY

- 3.1 Subject to clause 3.2, all Goods will be delivered by the carrier nominated by the Supplier to the place nominated by the Purchaser.
- 3.2 Delivery shall be made by the route and method the Supplier considers appropriate to the place indicated on the order form or, if no place of delivery is specified, delivery shall be made at the Supplier's premises and shall take place at the time when the Goods are made available for despatch at the Supplier's premises. If the Purchaser fails or refuses, or indicates to the

- Supplier that it will fail or refuse, to take or accept delivery, then the Goods shall be deemed to have been delivered when the Supplier was willing to deliver them.
- 3.3 For any of the Good's requiring urgent despatch due to the Purchaser's request, or where a more expensive route is demanded, the Supplier reserves the right to charge [an additional fee in an amount determined by the Supplier at its sole discretion] or [the difference between the normal freight used and the additional freight cost] to meet that delivery request].
  - 3.4 Non-receipt of any of the Goods must be notified within seven days of the date of invoice or advice of despatch, whichever is earlier, otherwise credit for such Goods will not be allowed.
  - 3.5 The Supplier reserves the right to deliver the Goods by instalments and each instalment shall be deemed to be a Contract. Should the Supplier fail to deliver or make defective delivery of one or more instalments this shall not entitle the Purchaser to vary its initial order. The Supplier will not deliver Goods with an expiry date of less than six months unless otherwise agreed to in writing.
  - 3.6 Without prejudice to any other rights and remedies which it may have, the Supplier may charge storage and transportation expenses if the Purchaser fails or refuses to take or accept delivery or indicates to the Supplier that it will fail or refuse to take or accept delivery at the time specified in the Contract or at any other times that the Supplier is able to deliver the Goods.
  - 3.7 Delivery of 10% more or less than the quantity of the Goods ordered by the Purchaser shall constitute performance of the Contract, the amount under or over supplied to be deducted or charged for pro rata.
4. PRICE
    - 4.1 Unless otherwise agreed in writing by the Supplier prior to the despatch date of any of the Goods, Goods shall be charged at the Supplier's list prices at the date of dispatch.
    - 4.2 The Contract Price excludes GST, which is to be added to the Contract Price and paid by the Purchaser.
    - 4.3 All prices are subject to change by the Supplier without notice to the Purchaser.
    - 4.4 The Supplier shall only be responsible to comply with regulations, bylaws, codes and standards specified in the Contract and the Supplier shall be under no liability whatsoever for any failure to meet any other regulations, bylaws, codes and standards. In the event of there being any changes in any regulations, bylaws, codes or standards with which the Supplier is obliged to comply after the date of the Contract, then any additional costs in meeting such changes shall be to the account of the Purchaser.
    - 4.5 The Supplier may at various times offer promotions which carry special conditions for qualification. These may include quantity of purchase, time periods or the quoting of special codes when ordering. If the conditions are not satisfied, normal pricing will apply.
    - 4.6 The Supplier is not obliged to offer a credit to the Purchaser for stock on hand in the event of a price reduction.
  5. CREDIT
    - 5.1 Unless otherwise agreed in writing, payment shall be made on the 20th day of the month following invoice. Failure to make payment in full on or before the due date constitutes a default and in addition to its other rights, the Supplier retains the right to charge a default penalty on such overdue amount calculated on a daily basis at the rate of interest payable on the Supplier's bank overdraft from time to time.
    - 5.2 By agreeing to these terms and conditions and by accepting the Goods on credit in accordance with clause 4.1, the Purchaser authorises the Supplier to make enquiries as to the credit and financial history of the Purchaser, including but not limited to, by obtaining such reports from credit reporting agencies as may be required by the Supplier from time to time. Any credit offered under clause 5.1 may be conditional upon the Purchaser's directors giving personal guarantees in relation to the Purchaser's obligations and their consent for the Supplier to make such enquiries as to their personal and commercial credit and financial history,

including, but not limited to, by obtaining such reports from credit reporting agencies as may be required by the Supplier from time to time.

- 5.3 The Supplier reserves the right to terminate the Purchaser's credit account at any time. Upon such event all amounts payable for Goods sold become due for immediate payment. In the event of such termination, the Supplier may require security for payment and may suspend performance of its obligations under the Contract until the provision of sufficient security. Such termination shall be without prejudice to any other rights the Supplier may have, and the Purchaser will not be entitled to any compensation in respect of such termination.
- 5.4 The Purchaser agrees to pay to the Supplier, or at the Supplier's direction, all reasonable collection costs, including commissions and legal charges on a solicitor and client basis, on all moneys outstanding on its credit account should the Purchaser breach any of these terms and conditions of sale and action be taken by or on behalf of the Supplier to recover the debt.
- 5.5 The Purchaser shall not be entitled to withhold payment or to make any deductions from the Contract Price without the prior written consent of the Supplier.
- 5.6 Receipt of a cheque, bill of exchange, or other negotiable instrument by the Supplier shall not constitute payment and the Purchaser shall remain liable for the Contract Price until such cheque, bill of exchange, or negotiable instrument is paid in full.
- 5.7 Any additional payments due by the Purchaser pursuant to any other provisions of the Contract shall be paid at the time provided in the Contract or, if no time is provided, within seven days of payment being demanded in writing by the Supplier.

## 6. RETURNS

- 6.1 The terms of this section 6 shall apply wherever the Consumer Guarantees Act 1993 does not apply to the Contract, or where the terms are not inconsistent with that Act.
- 6.2 Subject to clauses 6.3 and 6.4, and provided the Purchaser is not in default under these terms and conditions of sale, Goods will only be accepted for return (for credit or for replacement) if they come under any of the following categories:
  - (a) Goods which the Supplier is satisfied were damaged in transit between the distribution warehouse used to store the Supplier's products and the place of delivery specified by the Purchaser. In such instances, the Supplier must be notified by the Purchaser no later than seven days after receipt of the consignment that the Goods have been damaged, and the Purchaser should also indicate on the carrier's consignment docket that Goods are "damaged".
  - (b) Goods supplied which were not ordered.
  - (c) Goods supplied which, to the satisfaction of the Supplier, are rendered unsaleable by a manufacturing or packaging fault.
  - (d) Goods that are received by the Purchaser within six months of their expiry date and of which the Supplier has been notified in writing no later than seven days after receipt of the consignment. Such Goods will be replaced with similar products with an improved expiry date life or the price refunded at the Supplier's discretion.
- 6.3 The following items will not be accepted for return (either for credit or replacement) except at the Supplier's sole discretion:
  - (a) Goods damaged on the Purchaser's premises.
  - (b) Goods sold on a non-return basis.
  - (c) Goods from a line of stock that has been deleted.
  - (d) Goods which have not expired, except as specified in clause 6.2 above.
  - (e) Goods having a broken seal, label removed or wholesaler or retailer label or price tag attached.
  - (f) Goods that have not been purchased directly from the Supplier.
  - (g) Goods involved in a fire sale, sacrifice sale or bankruptcy sale.
  - (h) Damaged Goods, except as specified in clause 6.2(a) above.

- (i) Goods which have an expiry date which has passed, except as specified in clause 6.2(d) above.
  - (j) Goods that have been incorrectly ordered by the Purchaser.
  - (k) Goods that are refrigerated.
  - (l) Goods where no guarantee can be provided that the storage conditions match the specified requirements on the product label, including, without limitation, where the product label states that the Goods must be stored in temperature controlled conditions.
- 6.4 The Purchaser agrees to pay any and all fees (including freight charges) associated with the return of any Goods which were ordered in error by the Purchaser or which are no longer required by the Purchaser.
- 6.5 All Goods being returned to the Supplier must be sent in accordance with the procedure for the return of Goods in clauses 6.6 and 6.7. The Supplier's sales representatives are not authorised to approve Goods for return.
- 6.6 Any requests for return (either for credit or replacement) must be made within 7 days of invoice date except in respect of Goods referred to in clauses 6.2(a) and 6.2(d). All Goods returned to the Supplier must be accompanied by a copy of the packing slip or invoice together with a valid Returned Material Authorisation Number ("RMA") (which may be obtained from the Supplier's Customer Services department). A RMA number does not guarantee that Goods will be credited or replaced, and subject to section 9 of these terms and conditions of sale, the Supplier reserves the right in its absolute discretion to decline any request for return. Additionally, the Supplier will require evidence of storage and handling to support correct storage conditions.
- 6.7 In respect of returns, the Purchaser must comply with the following procedures:
- (a) Contact the Supplier within 7 days of invoice date to obtain the RMA number.
  - (b) Pack the Goods to be returned securely and write the RMA number on the packaging near the address label. The Purchaser must not mark the packaging on any of the Goods to be returned.
  - (c) Arrange and pay for shipping the Goods to the distribution warehouse used to store the Supplier's Goods except where the Supplier has arranged to pick up the Goods.
- 6.8 The Supplier reserves the right to dispose of, without recourse, any Goods which are returned and not accompanied by the matters, or in accordance with the procedure, specified in clauses 6.6 and 6.7.
7. RISK AND INSURANCE
- 7.1 The risk in Goods purchased shall, unless otherwise agreed in writing, pass to the Purchaser upon delivery to the Purchaser or to its agent or to a carrier commissioned by the Purchaser
- 7.2 While the Goods continue to secure the Purchaser's indebtedness and obligations, the Purchaser shall keep the Goods insured in the names of the Supplier and the Purchaser for their respective rights and interests and will produce to the Supplier upon demand such evidence as the Supplier may require to confirm the existence of such insurance. If the Purchaser defaults in the performance of its obligations under this clause, the Supplier shall be entitled to insure the Goods and the cost of effecting such insurance shall be payable by the Purchaser to the Supplier upon demand.
- 7.3 If any of the Goods are damaged or destroyed while the Goods continue to secure the Purchaser's indebtedness and obligations, the Supplier shall be entitled, without prejudice to any of its other rights or remedies under the Contract to receive all insurance proceeds which are payable in respect thereof (whether or not the purchase price of such Goods has become payable under the Contract) and the production of the Contract by the Supplier shall be sufficient evidence of the Supplier's right to receive payment of such insurance proceeds without the need for further enquiry by any person dealing with the Supplier. Any such insurance proceeds shall be applied by the Supplier as follows:

- (a) first, in payment of the Contract Price of the Goods which are damaged or destroyed, if unpaid;
  - (b) secondly, in payment of the outstanding Contract Price of any other Goods supplied to the Purchaser by the Supplier, whether under the Contract or otherwise;
  - (c) thirdly, in payment of any other Amount Owing or other moneys payable to the Supplier by the Purchaser whether under the Contract or otherwise;
  - (d) thereafter any balance shall be paid to the Purchaser.
8. SECURITY INTEREST
- 8.1 The Purchaser grants a security interest to the Supplier in each and every part of the Goods as security for payment of that part and of each other part or parts of the Goods and for any other amounts owing by the Purchaser to the Supplier from time to time, and for the performance by the Purchaser of all the Purchaser's other obligations to the Supplier from time to time ("Purchaser's indebtedness and obligations"). For the purposes of section 36(1)(b) of the PPSA, and to ensure maximum benefit and protection for the Supplier by virtue of section 36(1)(b)(iii) of the PPSA, the Purchaser confirms and agrees that the Purchaser intends to and does grant to the Supplier, as security for the Purchaser's indebtedness and obligations, a security interest in all of the Purchaser's present and after-acquired property except only for any such property which is or comprises items or kinds of personal property ("excepted property");
- (a) in or to which the Purchaser has rights; and
  - (b) which has not been supplied by the Supplier to the Purchaser, other than any excepted property which is or comprises proceeds of any of that present and after-acquired property which has been supplied by the Supplier to the Purchaser.
- 8.2 The Supplier authorises the Purchaser to sell or lease, in the ordinary course of business of the Purchaser, any Goods that are comprised in the Purchaser's inventory, provided that:
- (a) such authority may be revoked by written notice from the Supplier at any time if the Supplier deems the credit of the Purchaser to be unsatisfactory or if the Purchaser is in default in the performance of its obligations under the Contract or any other contract between the Supplier and the Purchaser, and shall be deemed automatically revoked if the Purchaser shall commit any act of bankruptcy, enter into any composition or arrangement with its creditors or (in the case of a company) do any act which would render it liable to be wound up or if a resolution is passed or proceedings commenced for the winding up of the Purchaser or a receiver is appointed in respect of all or any assets of the Purchaser; and
  - (b) until the Purchaser's indebtedness and obligations have been repaid or fulfilled, the Purchaser shall hold such part of the proceeds it receives from any sub-sale of the Goods under this clause 8.2 that is less than or equal to the Purchaser's indebtedness and obligations at the time of receipt as fiduciary agent and trustee for the Supplier.
- 8.3 Until the Purchaser's indebtedness and obligations have been repaid or fulfilled, the Purchaser must not grant a security interest in the Goods to any other person, or otherwise encumber the Goods in any way.
- 8.4 While the Goods continue to secure the Purchaser's indebtedness and obligations, the Purchaser will, unless otherwise required by the Supplier, store the Goods separately and clearly identify the Goods as being subject to the Supplier's security interest.
- 8.5 The Supplier shall be entitled to enter, as the agent of the Purchaser, the premises where any of the Goods are situated and remove those Goods at any time without being responsible for any damages if in the opinion of the Supplier payment for those Goods is unlikely to be made.
- 8.6 The Purchaser agrees to do anything that the Supplier reasonably requires to ensure that the Supplier has a perfected security interest in all the Goods and a purchase money security interest in each part of the Goods to the extent of the purchase price for that part.

- 8.7 The Supplier may allocate amounts received from the Purchaser in any manner it determines, including in any manner required to preserve any purchase money security interest it has in any Goods.
- 8.8 The Purchaser agrees to reimburse the Supplier for all costs and/or expenses incurred or payable by the Supplier in relation to registering, maintaining or releasing any financing statement in respect of any security interest under the Contract.
- 8.9 The Purchaser waives the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest under the Contract.
- 8.10 The Purchaser agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to this Contract, or the security under this Contract, and waives the Purchaser's rights under sections 121, 125, 129, 131 and 132 of the PPSA.
9. DELAY
- 9.1 If any time for the delivery of the Goods or completion of the Contract or any part thereof shall be stated in the Contract, such time shall be approximate only and shall not be deemed to be of the essence of the Contract.
- 9.2 The Supplier shall not be liable for failure to deliver the Goods or for any delay in delivery of the Goods where such failure or delay is occasioned by strike, combination of workmen, lockout, difficulty in procuring components or materials, shortage of labour, lack of skilled labour, delays in transit, failure or delay by the Purchaser in performing any of his obligations hereunder, failure or delays by suppliers or subcontractors, failure delay or inability to obtain any necessary import or export licence foreign exchange control authorisation or similar authorisation, legislative governmental or other prohibitions or restrictions, fire, flood, hostilities, commotions or other causes whatsoever (whether similar in nature or not to the foregoing) beyond the Supplier's reasonable control.
- 9.3 If the manufacture, supply or delivery of the Goods is delayed by reason of or as a result of any act, omission, default or request by or on behalf of the Purchaser, the Supplier may, without prejudice to its other rights and remedies, require payment by the Purchaser of such portion of the Contract Price as represents the extent to which the Supplier has performed the Contract or carried out work required by the Contract up to the date such payment is required together with any expenses or additional costs incurred by the Supplier as a result of such delay. In the event of such delay continuing beyond a reasonable time, the Supplier may, without prejudice to its other remedies, terminate the Contract.
10. GUARANTEES
- 10.1 Where the Consumer Guarantees Act 1993 applies to the Contract:
- (a) if the Goods are acquired by the Purchaser for business purposes, the Purchaser agrees that the Consumer Guarantees Act 1993 does not apply;
  - (b) if the Goods are not acquired by the Purchaser for business purposes, the Supplier reserves the right to replace any Goods which fail to comply with any guarantee contained in the Consumer Guarantees Act 1993; and
  - (c) should the Supplier elect to repair any defective Goods, such repair shall be effected at such place as the Supplier may specify and the Purchaser shall be responsible for shipment of the defective Goods to and from the place or places so specified.
- 10.2 Where the Purchaser supplies the Goods in trade to a person acquiring them for business purposes, it must be a term of the Purchaser's contract with that person that the Consumer Guarantees Act 1993 does not apply in respect of the Goods.
- 10.3 The Purchaser acknowledges that the Supplier does not provide any Express Guarantees (as defined in the Consumer Guarantees Act 1993) other than those expressly confirmed by the Supplier in writing.

- 10.4 Where the Purchaser supplies the Goods to any other person in the course of trading, the Purchaser must not give or make any undertaking, assertion or representation in relation to the Goods without the Supplier's prior approval in writing.
- 10.5 The Purchaser agrees to indemnify the Supplier against any liability or cost incurred by the Supplier under the Consumer Guarantees Act 1993 as a result of any breach by the Purchaser of the obligations contained in this section 10.
- 10.6 The following terms apply wherever the Consumer Guarantees Act 1993 does not apply to the Contract, or where the following terms are not inconsistent with the Consumer Guarantees Act 1993:
- (a) Defective Goods or Goods which do not comply with the Contract shall at the Supplier's discretion be replaced in accordance with section 6, or the price refunded.
  - (b) The Supplier accepts no liability to repair, replace or refund any defective Goods:
    - (i) if any attempt to repair the defective Goods is made by any person or persons not authorised by the Supplier to effect such repairs;
    - (ii) if the defective Goods have been modified without the approval of the Supplier; or
    - (iii) if the defective Goods have not been stored, maintained, installed or operated in a proper manner.The Supplier shall not be obliged to carry out repair work or to replace or refund any defective Goods for so long as the Purchaser is in default in relation to any payment or in the performance of any obligation under the Contract.
  - (c) If the Goods or any component or components thereof are not manufactured by the Supplier, then the warranty contained in clause 10.6(a) shall not apply to such Goods, component or components as are not manufactured by the Supplier and no warranties are given by the Supplier in respect of such Goods, component or components. In the case where the manufacturer or supplier of any such Goods, component or components provides any warranty, then the Supplier (to the extent that it is able to do so) shall make such warranty available to the Purchaser.
  - (d) The Supplier accepts no liability for any Claim by the Purchaser or any other person, including without limitation any Claim relating to or arising from:
    - (i) any conditions, warranties, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability or otherwise, whether express or implied by law, trade, custom or otherwise; or
    - (ii) any representations, warranties, conditions or agreement made by any agent or representative, which are not expressly confirmed by the Supplier in writing, and the Purchaser agrees to indemnify the Supplier against any such Claim.
  - (e) Where the Contract provides for any testing or commissioning procedure or any other acceptance procedure in respect of the Goods, no claim shall be made by the Purchaser if the Goods fail to comply with the requirements of the Contract at any time after the successful completion of such testing, commissioning or acceptance procedures, subject however to the warranty in respect of defective Goods contained in clause 10.6(a)
  - (f) In any event, the Supplier's liability under any such Claim shall not exceed the Contract Price of the Goods.
  - (g) No Claim shall be brought by the Purchaser against the Supplier unless brought within one year from the date of delivery of the shipment of goods to the Purchaser or from the date of the alleged breach of the Contract whichever is earlier.
- 10.7 Nothing in these terms is intended to have the effect of contracting out of the provisions of the Consumer Guarantees Act 1993 except to the extent permitted by that Act, and these terms and conditions of sale are to be modified to the extent necessary to give effect to that intention.

## 11. IMPROPER PAYMENTS

- 11.1 If the Supplier pays the Purchaser a rebate in respect of purchases under this Agreement, the Purchaser warrants and represents that:
- (a) the Purchaser has not and will not promise, pay or give anything of value either directly or indirectly to any government official for the purpose of obtaining or retaining business or any improper advantage for the Supplier. In this clause, 'government official' means any official, officer, representative, or employee of, including any animal health care professional, employed by any government department, agency or instrumentality (including any government-owned or controlled commercial enterprise), or any official of a public international organisation or political party or candidate for political office;
  - (b) the Purchaser will at all times comply with the Pfizer Anti-Bribery and Anti-Corruption Principles available on [www.pfizer.co.nz](http://www.pfizer.co.nz);
  - (c) the Purchaser agrees to permit the Supplier to take reasonable steps to ensure that rebates paid are properly used by permitting the Supplier's auditors to access any relevant books, documents, papers and records of the Purchaser involving the payment of rebates by the Supplier;
  - (d) the Supplier may terminate the Purchaser's credit account if the Supplier learns that the Purchaser is making, or has made, improper payments to government officials.

## 12. INFORMATION

### 12.1 The Purchaser authorises the Supplier to:

- (a) collect information about the Purchaser from any person;
- (b) use any information it holds, now or in the future, about the Purchaser; and
- (c) disclose information about the Purchaser to any person;  
for any purpose associated with the Supplier's business, including credit assessment, debt collection and direct marketing activities. The Purchaser authorises any third party to release any information about the Purchaser to the Supplier.

### 12.2 If the Purchaser is an individual, the Purchaser may be entitled under the Privacy Act 1993 to request access to and correction of any personal information which the Supplier holds about the Purchaser.

## 13. DEFAULT

### 13.1 If an Event of Default occurs, the Supplier shall have the right, without prejudice to any other remedies:

- (a) to require the Purchaser not to resell or part with possession of any Goods in the possession of the Supplier until the Purchaser has paid in full all sums owed by it to the Supplier;
- (b) to withhold delivery of any undelivered Goods and stop any Goods in transit;
- (c) to suspend or terminate the Contract;
- (d) to repossess Goods without being responsible for any damage thereby caused, and the Purchaser shall be liable for all the costs and expenses in relation to any such repossession;
- (e) to resell any or all of the Goods or otherwise dispose of them as it sees fit, and the Amount Owing and other moneys payable shall immediately become due and payable notwithstanding that the due date has not arisen.

### 13.2 In any of the foregoing events, the Supplier also reserves the right, as the agent of the Purchaser, to enter upon the premises where any of the Goods are situated during reasonable business hours and subject to prior consultation with the Purchaser and take possession of and remove the same without being responsible for any damage; thereby caused, and the Supplier may resell any or all of those Goods and apply the proceeds in or towards payment of the Contract Price and all other moneys owing to the Supplier by the Purchaser. All costs and expenses of or incurred by the Supplier as a result of any such action together with transportation and storage charges shall be payable by the Purchaser upon demand. Any suspension of the Contract by the Supplier shall not prevent it terminating the Contract during the period of suspension.

14. CONTRACT

14.1 The Contract forms the basis on which the Supplier supplies and sells the Goods to the Purchaser. Each such supply and sale shall be effected pursuant to the terms of the Contract (unless in any specific case agreed otherwise in writing). Any invoice or other document evidencing or describing any Goods is incorporated into and forms part of the Contract.

15. CONFLICT

15.1 These terms and conditions of sale are paramount, and, to the extent that there is any conflict between any provision of them and any invoice or other document evidencing or describing any Goods, the terms and conditions of sale will prevail. Further, if there is any other document or arrangement which conflicts with the Contract, the Contract shall prevail. However, nothing in this clause shall be taken to affect any special terms or arrangements which are specifically agreed to in writing between the Supplier and the Purchaser and which are intended to take effect notwithstanding anything else contained in the Contract.

16. GENERAL

16.1 Any terms or conditions put forward by the Purchaser, whether in a purchase order or otherwise, shall not be binding on the Supplier insofar as they purport to amend, annul or augment any of these terms and conditions of sale unless specifically agreed in writing by the Supplier.

16.2 Storage of the Goods must be in accordance with the requirements stated on those Goods, ie refrigerated and cool storage facilities for specified Goods must be provided.

17. WAIVER OR VARIATION

17.1 If the Supplier exercises or fails to exercise any right or remedy available to it, this shall not prejudice the Supplier's rights in exercising that or any other right or remedy.

17.2 The Supplier reserves the right to vary or add to these terms and conditions of sale at any time without notice.

18. NO ASSIGNMENT

18.1 The Purchaser must not transfer or assign its rights under the Contract to anyone else without the Supplier's prior consent in writing.

19. LAW AND JURISDICTION

19.1 The Contract shall in all aspects be deemed to be a Contract made in New Zealand and the construction, validity and performance of the Contract shall be governed by New Zealand law. The exclusive jurisdiction of the New Zealand courts to entertain all claims and actions arising out of the Contract is accepted and acknowledged by the Purchaser provided however that the Supplier shall be entitled to commence any action arising out of or in respect of the Contract in any other court.

20. INTERPRETATION

20.1 "Amount Owing" means the Contract Price for the Goods and any other costs, charges or amounts (including, but not limited to, transportation and storage costs) which the Supplier is entitled to charge the Purchaser under the Contract.

20.2 "Contract" means these terms and conditions of sale themselves together with any and every invoice or other document evidencing or describing, whether by item or kind or otherwise, any Goods.

20.3 "Contract Price" means the price of the Goods as set out in the Supplier's invoice.

20.4 "Claim" includes any claim:

(a) for loss of profits; or

(b) for any consequential, indirect or special loss, damage or injury of any kind suffered by any person arising directly or indirectly from:

(i) any breach of the Supplier's obligations under the Contract; or

(ii) any negligence, misrepresentation or other act or omission by the Supplier or its employees, agents or contractors; or

(c) for compensation, demand, remedy, liability or action.

- 20.5 "Event of Default" means an event where:
- (a) the Purchaser fails to comply with the terms of the Contract or any other contract with the Supplier; or
  - (b) the Purchaser commits an act of bankruptcy; or
  - (c) the Purchaser enters into any composition or arrangement with its creditors; or
  - (d) if the Purchaser is a company:
    - (i) the Purchaser does anything which would make it liable to be put into liquidation; or
    - (ii) any steps are taken to put the Purchaser into liquidation; or
    - (iii) a receiver or statutory or official management is appointed over all or any of the Purchaser's assets; or
  - (e) any Goods are at risk.
- 20.6 "Goods" means all prescription and non-prescription medical and healthcare treatment products and food for humans and animals and associated products, equipment relating to such products and all other goods or other property which, in each case, are supplied by the Supplier to the Purchaser and, for the avoidance of doubt, in each case includes all such goods and property so supplied:
- (a) whether or not described by item or kind that enables them to be identified;
  - (b) which are or comprise inventory of the Purchaser.
- 20.7 "Purchaser" means the person purchasing the Goods from the Supplier pursuant to the Contract, including that person's successors and assigns.
- 20.8 "PPSA" means the Personal Property Securities Act 1999. The terms "after-acquired property", "at risk", "default", "inventory", "lease", "perfected", "proceeds", "purchase money security interest", "rights", "security interest" and "sell" have the respective meanings given to them under, or in the context of, the PPSA.
- 20.9 References to the Supplier include the Supplier's successors and assignees.
- 20.10 References to the Consumer Guarantees Act 1993 and the Privacy Act 1993 include such legislation from time to time amended, re-enacted or substituted and any statutory instruments, regulations and orders issued under such legislation.