

1. SUPPLY OF PRODUCTS

1.1 Supply

MEDICLEAR (trading as Australian Business Consumables) will supply and the Customer will buy the Products in accordance with this Agreement.

1.2 Acceptance and Engagement

The Customer will be taken to have accepted this Agreement if the Customer:

- (a) has purchased goods via www.australianbusinessconsumables.com.au
- (b) otherwise communicates their acceptance to MEDICLEAR (whether in writing or verbally); or
- (c) continues to instruct MEDICLEAR in connection with the supply of Products.

1.3 Exclusion of all other terms and conditions

- (a) This Agreement:
 - (i) applies to the exclusion of all other terms and conditions and supersedes all terms and conditions previously issued by MEDICLEAR or otherwise agreed between MEDICLEAR and the Customer, and all prior discussions, representations and arrangements relating to the supply of the Products;
 - (ii) applies to all Quotations submitted by MEDICLEAR; and
 - (iii) overrides any terms of purchase used by the Customer to order and purchase the Products.
- (b) No variation of this Agreement is binding unless expressly agreed in writing by an authorised representative of MEDICLEAR.

2. PRODUCTS

2.1 Price of Products

- (a) Unless expressly stated otherwise, the Price is exclusive of GST and all other taxes, duties or government charges levied in respect of the Products.
- (b) Subject to clause **Error! Reference source not found.**, MEDICLEAR reserves the right to change the Price in its absolute discretion.

2.2 Order

- (a) Once accepted by MEDICLEAR, Orders can only be cancelled or varied by the Customer within 2 Business Days of placing an Order or with the written approval of MEDICLEAR. MEDICLEAR reserves the right to charge a reasonable cancellation fee, which may include an amount for loss of profit.
- (b) As the Price has been calculated by MEDICLEAR based on the quantities of Products to be supplied or designated to the Customer, if the Customer requests a change to the quantity or designation of Products, MEDICLEAR has a right to adjust the Price accordingly.

2.3 Customer cooperation

To supply the Products successfully, MEDICLEAR requires the Customer's timely co-operation. Accordingly, the Customer must provide in a timely fashion all information, data, documents and instructions that MEDICLEAR reasonably requires to enable MEDICLEAR to supply the Products.

2.4 Timeframe

Unless agreed otherwise in writing between MEDICLEAR and the Customer, any estimate of time for the delivery of the Products is intended for planning and estimating purposes only and is not binding.

2.5 Delivery

- (a) The Customer authorises MEDICLEAR to deliver the Products to the place nominated by the Customer and to leave the Products at such place, regardless of whether any person is present to accept delivery.
- (b) MEDICLEAR shall not be obliged to obtain a signed receipt or other acknowledgement at the nominated place for delivery, but if a signed receipt or other acknowledgement is obtained from someone believed by MEDICLEAR to be authorised by the Customer to sign or otherwise take delivery, then such signed receipt or other acknowledgement shall be conclusive evidence of the Customer's acceptance of the Products delivered.

3. INVOICING AND PAYMENT

3.1 Details in Invoice

All invoices issued by MEDICLEAR will include details of the Price and any other costs and charges payable by the Customer in accordance with this Agreement and the payment terms.

3.2 Payment of Price

- (a) Subject to clause 3.2(b), payment is due upon delivery of the Products.
- (b) If MEDICLEAR has agreed to supply the Products on credit, the Customer must pay the Price, without deduction, within 14 days of the issue of a tax invoice and provision of the Products.

3.3 Interest

Without in any way limiting MEDICLEAR's right to require payment in full in accordance with clause 3.2, MEDICLEAR may at its sole discretion charge interest on overdue accounts at the rate fixed by section 2 of the Penalty Interest Rates Act 1983 (Vic).

3.4 Recovery Costs

The Customer must pay all costs and expenses incurred by MEDICLEAR, its advisers, mercantile agents and any other person, in respect of any action instituted or considered against the Customer, whether for debt, repossession of Products or otherwise.

3.5 No right to offset

No amount owing, whether present or future, actual, contingent or prospective and on any account whatsoever by the Customer to MEDICLEAR may be offset against any Liability whether present, future, actual, contingent or prospective of the Customer to MEDICLEAR under this Agreement or on any other account whatsoever.

3.6 GST

- (a) In this clause expressions that are not defined, but which have a defined meaning in the GST Law, have the same meaning as in the GST Law.
- (b) Unless expressly indicated otherwise, any sum payable, or amount used in the calculation of a sum payable, under this Agreement has been determined without regard to GST and must be increased on account of any GST payable in accordance with this clause.
- (c) If GST is imposed on any supply made under or in accordance with this Agreement, the recipient of the supply (**Receiving Party**) must pay to MEDICLEAR (**Supplier**) an additional amount equal to the GST payable on the supply, subject to the Receiving Party receiving a valid tax invoice, or a document that the Commissioner will treat as a tax invoice, in respect of the supply at or before the time of payment. Payment of the additional amount will be made at the same time and in the same manner as payment for the supply is required to be made in accordance with this Agreement.

4. APPORTIONMENT OF LIABILITY

If the Customer makes any claim against MEDICLEAR for any Liability arising out of, or in connection with, the Products or this Agreement and some or all of that Liability was due to, or contributed to by the Customer or another third party, MEDICLEAR will be liable only for that proportion of the Liability which its acts and omissions bear in relation to the total conduct of all persons causing or contributing to that Liability.

5. RISK, TITLE AND THE PPSA

5.1 Risk

The risk in the Products passes to the Customer on delivery of the Products to the Customer's requested delivery location. MEDICLEAR is not liable to the Customer for any loss or damage or deterioration of the Products after delivery.

5.2 Title and the PPSA

- (a) Ownership of the Products will remain with MEDICLEAR until all amounts owing by the Customer to MEDICLEAR have been paid in full.
- (b) MEDICLEAR will apply amounts it receives from the Customer towards its oldest outstanding Invoice.

5.3 Registration of Title under the *Personal Property Securities Act 2009* (PPSA)

- (a) The Customer acknowledges and agrees that this Agreement constitutes a Security Agreement for the purposes of the PPSA and creates a security interest in all Products that have and will be supplied in the future by MEDICLEAR to the Customer in the future.
- (b) The Customer grants a Purchase Money Security Interest to MEDICLEAR to secure any amounts owing to MEDICLEAR by the Customer under this Agreement.
- (c) The Customer consents to MEDICLEAR registering any Security Interest contemplated by this Agreement on the PPSA register and the Customer agrees to provide all assistance reasonably required to facilitate registration and perfection of MEDICLEAR's security interest so that it has priority over all other security interests in the Products. The Customer waives the right to receive notice of a verification statement in relation to any registration on the PPSA register.
- (d) Notices or documents required or permitted to be given to MEDICLEAR for the purposes of the PPSA will be provided in accordance with the PPSA.

5.4 Application of PPSA

If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising in connection with this Agreement, the Customer agrees that sections 95 and 130 (to the extent they require MEDICLEAR to give notice to the Customer), and section 96, 121(4), 125, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA will not apply to the enforcement of this Agreement.

6. WARRANTIES, GUARANTEES AND CONDITIONS

- 6.1 All implied guarantees, warranties and conditions (including warranties as to the quality or fitness for purpose of Products) are excluded to the maximum extent permitted by Law.
- 6.2 To the maximum extent permitted by Law, MEDICLEAR is not liable:
 - (a) for any Consequential Loss under or in connection with this Agreement; or for any loss or damage to the Products resulting from any action or omission (including any negligent action or omission) on the part of MEDICLEAR, or the employee, contractors or agents of MEDICLEAR.

7. GUARANTEE INDEMNITY AND CHARGE

- 7.1 The Guarantor guarantees to MEDICLEAR payment of all monies and performance of all obligations including any past, present and future indebtedness by the Customer or the Guarantor arising from any past, present or future dealing with MEDICLEAR and indemnifies MEDICLEAR against all Liabilities suffered by MEDICLEAR arising from any past, present or future dealing with the Customer or the Guarantor.
- 7.2 The Guarantor agrees:
 - (a) to pay any person nominated by MEDICLEAR any amount MEDICLEAR certifies is payable before being entitled to dispute whether that amount is payable;
 - (b) that this Agreement will remain effective notwithstanding any conduct or event (including any Deed of Company Arrangement) which, but for this clause, may release or vary any obligation of the Customer or the Guarantor;
 - (c) any payment which is subsequently avoided by any Law relating to insolvency will be deemed not to have been paid; and
 - (d) that the Guarantor signs both in his or her personal capacity and as trustee of every trust of which the Guarantor is a trustee.
- 7.3 The Guarantor grants a charge in favour of MEDICLEAR over all the Guarantor's estate and interest in any land and in any other assets whether tangible or intangible in which the Guarantor has any legal or beneficial interest or in which the Guarantor acquires any such interest in the future, to secure MEDICLEAR's rights under this Agreement and the Guarantor agrees, upon request, to execute any document requested by MEDICLEAR to further secure MEDICLEAR's rights under this Agreement.
- 7.4 In consideration of the Guarantor's promises under this Agreement, MEDICLEAR may grant credit to the Customer from time to time at MEDICLEAR's discretion.
- 7.5 For the purpose of giving effect to the Guarantor's obligations pursuant to this Agreement, the Customer irrevocably appoints MEDICLEAR its attorney.
- 7.6 If there is more than one Guarantor, each Guarantor agrees to be jointly and severally liable for the full amount owed by MEDICLEAR under this Agreement.

- 7.7 MEDICLEAR may make any arrangement or compromise with the Guarantor, obtain additional guarantees, indemnities or securities from any party or release or compromise with any Guarantor or party without affecting the Guarantor's liability.
- 7.8 MEDICLEAR may grant or apply a credit limit to the Customer at MEDICLEAR's absolute discretion and any such credit limit will not limit the Guarantor's liability to MEDICLEAR.
- 7.9 MEDICLEAR may handle the Guarantor's personal information (including creditworthiness information) in accordance with clause 83.

8. PRIVACY AND CREDIT INFORMATION

8.1 Handling of personal and credit information

The Customer and Guarantor separately agree that MEDICLEAR may, to the extent permitted by law:

- (a) obtain information about the Customer's commercial credit activities from any of the trade references or the accountant named in the Credit Application or any business which provides information about the commercial credit worthiness of persons;
- (b) obtain a consumer credit report from a credit reporting body:
 - (i) about the Customer to assess this or any application for credit made by the Customer, or to collect overdue payments; and
 - (ii) about the Guarantor for the purpose of assessing whether to accept them as a guarantor in respect of this Agreement;
- (c) at any time (including before and after any provision of credit to the Customer), give a credit reporting body certain personal information about the Customer or Guarantor as authorised by Law, including (as applicable):
 - (i) permitted identity details;
 - (ii) that the Customer has applied for credit and the amount;
 - (iii) that MEDICLEAR is or is no longer a current credit provider to the Customer;
 - (iv) that the Guarantor has offered to act as guarantor; and
 - (v) any other information authorised by Law;
- (d) disclose the Customer's personal information (including credit reports and other information relating to the Customer's credit worthiness) to the Guarantor or a prospective guarantor. Credit reports and credit worthiness information would be disclosed to prospective guarantors for the purpose of them deciding whether to act as guarantor;
- (e) exchange the Customer's and Guarantor's personal information (including banker's opinions, credit reports and other information relating to credit worthiness) with other credit providers for purposes including:
 - (i) assessing the Customer's application for credit or the Guarantor's application to act as guarantor;
 - (ii) notifying other credit providers of the Customer's defaults or the Guarantor's failure to comply with its guarantor obligations;
 - (iii) exchanging information about the status of the person's obligations to MEDICLEAR where the person is in default with another credit provider;
 - (iv) assessing the Customer's or Guarantor's credit worthiness; and
 - (v) any other purpose authorised by Law;
- (f) exchange the Customer's and Guarantor's personal information (including credit reports and other information relating to credit worthiness) with its related parties;
- (g) use or disclose personal information about the Customer and Guarantor:
 - (i) for the management of the Customer's account and administrative purposes including research, planning, service development, security and risk management;
 - (ii) where a third party acquires or wishes to acquire, or makes inquiries in relation to acquiring, an interest in MEDICLEAR's business;
 - (iii) for the investigation and prevention of fraud and crime prevention and investigation; or
 - (iv) to the extent that MEDICLEAR is required or authorised by Law to do so;

- (h) share personal information with the Customer's or Guarantor's executor, administrator, trustee, guardian, attorney and agents (such as financial or legal advisers); and
- (i) share personal information with MEDICLEAR's service providers including organisations that provide archival, auditing, debt collection, banking, marketing, advertising, mailhouse, delivery, recruitment, call centre, technology, research, utility, professional advisory and security services.

8.2 Access to personal information

The Customer and the Guarantor may request access to any of their personal information which MEDICLEAR may hold.

9. TERMINATION

9.1 Breach of agreement

MEDICLEAR may terminate this Agreement with immediate effect by giving written notice to the Customer if:

- (a) the Customer breaches any material provision of this Agreement (including without limitation any breach in respect of an obligation to pay money) and fails to remedy the breach within 7 days after receiving notice requiring it to do so; and
- (b) the Customer breaches a material provision of the Agreement where that breach is not capable of remedy.

9.2 Termination events

The Customer must notify MEDICLEAR immediately if:

- (a) it disposes of the whole or any material part of its assets, operations or business;
- (b) there is a change in ownership of the Customer;
- (c) it ceases to carry on business;
- (d) it ceases to be able to pay its debts as they become due;
- (e) any step is taken by a mortgagee to take possession or dispose of the whole or part of its assets, operations or business;
- (f) any step is taken to enter into any arrangement between it and its creditors; or
- (g) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a provisional liquidator, a liquidator, an administrator or other like person in relation to the whole or part of its assets, operations or business.

9.3 Termination for termination events

MEDICLEAR may terminate the Agreement immediately without notice if any event referred to in clause 9.2 occurs.

10. AFTER TERMINATION

10.1 After termination

If the Agreement is terminated the Customer must, within 5 Business Days of termination, pay MEDICLEAR all amounts it owes MEDICLEAR irrespective of whether those amounts have fallen due and whether or not an invoice has been issued by MEDICLEAR.

10.2 Surviving provisions

Clauses 1 and 4 to 10 inclusive continue to apply after termination of the Agreement.

11. FORCE MAJEURE

No party is liable for any failure to perform or delay in performing its obligations under this Agreement if that failure or delay is due to a Force Majeure Event. If that failure or delay exceeds 30 days, the other party may terminate the Agreement with immediate effect by giving written notice to the other party. This clause does not apply to any obligation to pay money.

12. ASSIGNMENT

MEDICLEAR may in its absolute discretion sub-contract the supply of the Products or otherwise assign this Agreement. The Customer must not otherwise assign or deal with the Agreement or any rights under the Agreement without the prior written consent of MEDICLEAR.

13. GENERAL PROVISIONS

13.1 Notice

A notice to be given by a party to another party under the Agreement must be in writing and sent to the address previously nominated by that party and will be deemed to be duly given:

- (a) in the case of hand delivery, on the day of delivery;
- (b) three Business Days after the date of posting by pre-paid registered post; or
- (c) if sent by facsimile or email, when sent.

13.2 **Governing Law**

This Agreement is governed by the Law applicable in the State of Victoria, and the parties consent to the exclusive jurisdiction of the courts of the State of Victoria.

13.3 **Time**

Time is not of the essence except in relation to payment.

13.4 **Waiver**

The failure of a party at any time to require performance of any obligation under the Agreement is not a waiver of that party's right:

- (a) to insist on performance of, or claim damages for breach of, that obligation unless that party acknowledges in writing that the failure is a waiver; or
- (b) at any other time to require performance of that or any other obligation under the Agreement.

13.5 **Confidentiality**

The parties agree to keep the terms of this Agreement and all information provided between the parties in relation to the Agreement confidential.

13.6 **Unenforceable provision**

Where a clause in this Agreement is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in this Agreement.

13.7 **Relationship between the parties**

Nothing in this Agreement creates any fiduciary relationship, nor any partnership, joint venture or agency relationship between the parties.

14. **DEFINITIONS**

Unless otherwise inconsistent with the context:

- 14.1 **Agreement** means the agreement constituted by these Terms and Conditions of Trade and any associated Credit Application completed by the Customer and Guarantor.
- 14.2 **Consequential Loss** means any loss or damage suffered by the Customer or any other person which is indirect or consequential; or which is by way of loss of revenue, loss of profits, loss of goodwill or credit, loss of business reputation, future reputation or publicity, loss of use, loss of interest, damage to credit rating, or loss or denial of opportunity.
- 14.3 **Customer** means a Customer supplied or to be supplied Products by MEDICLEAR.
- 14.4 **Defect** means a defect, flaw or imperfection in a Product which prevents the Product from being used for the purposes intended under this Agreement, but does not include anything which has been disclosed as a feature or limitation of the Product by MEDICLEAR prior to the date of purchase, any defect, flaw or imperfection that is trivial or insubstantial, accidental damage, normal wear and tear or damage resulting from wilful neglect and **Defective** has a corresponding meaning.
- 14.5 **Force Majeure Event** means any failure or delay in the performance of a party's obligations under this Agreement as a result of a national strike, lockout, work stoppage, labour dispute, material shortage, utility outage, delay in transportation, fire, flood, earthquake, severe weather, act of God, accident, trade sanction, embargo, act of war, act of terror, condition caused by national emergency, new or changed Law, pandemic, epidemic or any other act or cause beyond the reasonable control and without fault of the delayed party, and whether affecting that party or its contractors or suppliers, for as long as the event prevails.
- 14.6 **GST** means any goods and services tax or similar tax.
- 14.7 **GST Law** means *A New Tax System (Products and Services Tax) 1999 (Cth)*.
- 14.8 **Guarantor** means the guarantor or guarantors named in the Credit Application and a reference to "Guarantor" includes all Guarantors.
- 14.9 **Liabilities** means all damages, losses, liabilities, costs, charges, expenses, outgoings or payments (whether direct or indirect, consequential or incidental) including any damages, losses, liabilities,

costs, charges, expenses, outgoings or payments in respect of any damage to property or injury to, or death of, any person.

14.10 **MEDICLEAR** means MEDICLEAR INVESTMENTS PTY LTD (ACN 643 462 926).

14.11 **Products** means any products supplied by MEDICLEAR to the Customer.

14.12 **Order** means any order for Products placed by the Customer.

14.13 **Price** means the price payable by the Customer to MEDICLEAR for the Products.

14.14 **Quotation** means a statement of price given by MEDICLEAR to the Customer for supplying specified Products, which may include specified terms and conditions.