

In these terms and conditions:

Goods means all goods supplied by us to you, including products relating to health and fitness, personal care and food service, and any other goods or services supplied by us to you;

you, your and similar expressions, refer to you, our customer or proposed customer; and

we, us and similar expressions, refer to Pharm-a-Care Laboratories Pty Limited (ACN 003 468 219), 18 Jubilee Avenue, Warriewood, NSW, 2102, +612 9997 1466.

1. Application of terms and conditions

These terms and conditions govern all supplies of Goods by us to you. Unless otherwise agreed in writing, all other terms and conditions, express or implied, are excluded to the fullest extent permitted by law, including any terms and conditions sought to be imposed by you.

2. Offer and acceptance

- 2.1 Any marketing material, price list, or quotation given to you by us is not an offer from us to sell you Goods, it is merely an invitation to you to place an order with us.
- 2.2 If you offer to purchase Goods based on any marketing material, price list or quotation from us, then your offer is subject to these terms and conditions.
- 2.3 We are not obliged to accept any order from you. If you place an order with us then it becomes binding from the moment that we accept it even if we do not tell you that it has been accepted. We may accept an order by written confirmation or by delivery and, in the case of delivery, only as to the portion of the order actually delivered.
- 2.4 If an order is accepted, we will carry out the order and you must pay for the Goods in accordance with these terms and conditions. Upon payment, goods carrying a minimum of six months remaining from their expiration date will be supplied in due course.

3. Cancellation and return of Goods

- 3.1 Subject to clause 11.1, no returns or cancellations will be accepted without prior written agreement from us, which we may provide or withhold in our discretion (including imposing conditions).
- 3.2 If we choose to accept the return of any order, or part of any order, that was fulfilled in good faith in concurrence with your order, we reserve the right to charge a restocking fee equal to 5% of the value of the returned Goods.
- 3.3 We cannot consider any request to return an order unless you return the Goods to us in original packaging with our original invoice number. If we provisionally agree to accept delivery of any returned Goods, you acknowledge that is to allow us to inspect the Goods to see if they are in good order and condition and to ensure it is commercially realistic for us to re-sell the Goods, and this does not mean we are bound to agree with the requested return.
- 3.4 Goods supplied to special order are not returnable.
- 3.5 We reserve the right to cancel orders, or the balance of orders, where we have reason to suspect your credit worthiness, or you have failed to adhere to the terms and conditions set out in this document.

4. Prices

- 4.1 All prices are in Australian dollars, unless otherwise explicitly stated. Irrespective of where you are located, Goods are invoiced at the price we charge on the date of despatch from our premises, unless otherwise agreed in writing between us and you.

5. Payments

- 5.1 Unless we agree to give you credit, you must pay for all orders on or before delivery of the Goods.
- 5.2 If we give you credit, you must pay each of our invoices within 30 days from the date of receipt of Goods, unless otherwise set out in writing by us.

6. Credit

- 6.1 If we decide to give you credit, we will provide you with written notice of our decision and you will be bound by these terms and conditions and any additional terms and conditions that we set for giving you credit.
- 6.2 We may decline to give you further credit at any time. If we do so, these terms and conditions and any credit conditions continue to apply to any amounts which you then owe to us.
- 6.3 We may, subject to the content of any additional documents setting out the terms and conditions on which we give you credit, withdraw any credit given to you and require that all monies are payable to us on demand.

7. Overdue payments

- 7.1 If any amount you owe us is not paid by the due date then:
 - (a) all money that you owe us on any account becomes immediately payable despite any previously agreed credit conditions;
 - (b) we may suspend supply or cancel any outstanding orders we have accepted from you;
 - (c) we may charge you interest on any amount from the due date until payment, calculated daily, at the rate prescribed as payable on judgments for monetary sums awarded by the Supreme Court of New South Wales, and interest may be capitalised each month so that cumulative interest may be payable;
 - (d) you are liable for all costs, losses and expenses we incur in connection with the recovery of overdue payments from you, including mercantile agents' and lawyers' fees and expenses.

8. Delivery and shipping terms

- 8.1 Unless otherwise agreed by us in writing, delivery will be FIS (free into store) for domestic Australian customers, unless otherwise agreed, and subject to individual written agreements for International customers.
- 8.2 Any delivery times are estimates only, involving no contractual obligations unless a guarantee in writing has been given by us for the deliver on a specific date.
- 8.3 You are required to inspect the Goods as soon as practicable after delivery has occurred and notify us of any damage, shortfall or other defect within 7 days of receipt of the Goods. We reserve the right to reject any claim for damage, shortfall or other defect received by us after this period.

9. Risk and title

- 9.1 We remain the owner of all Goods supplied to you until you have paid us all amounts owing in respect of all Goods supplied.
- 9.2 Until you become the owner of Goods in accordance with clause 9.1:
 - (a) you hold them as agent and bailee for us and you owe a fiduciary duty to us in respect of them;
 - (b) you must if required by us store them on your premises separately from your own goods or goods of any other person and in a manner which makes them readily identifiable as our Goods;
 - (c) we may terminate your right to resell or use them forthwith on written notice of termination being delivered to your place of business;
 - (d) we may retake possession, if:
 - (i) We may for the purpose you default in paying any part of the price or associated charges for them; or
 - (ii) you become or resolve to become subject to any form of insolvency administration.
 - (iii) administration.
- 9.3 We may for the purpose of recovery of our Goods enter (by our employees or agents) on any premises where the Goods are stored or where they are reasonably thought to be stored and may repossess them. This permission is irrevocable and you agree that our employees or agents so entering are not trespassing.
- 9.4 Goods you hold which meet the description of goods on an invoice for which payment has not been made is in the absence of evidence to the contrary treated as goods to which we have retained title. We may exercise our remedies under these provisions against those goods.
- 9.5 The debt you owe to us at the date of repossession of goods is, as between the parties, taken to include any payment we have previously received which might be claimed to be void under any law relating to bankruptcy, liquidation or the protection of creditors. This is so whether or not a claim has been made.
- 9.6 You may re-supply the Goods to any other person or entity before you have paid all amounts which are owing to us provided that:
 - (a) the re-supply is in the ordinary course of your business;
 - (b) all money received by you for the Goods will be held by you on trust for us; and
 - (c) you must either:
 - (i) pay the money to us immediately when it is received by you; or
 - (ii) deposit the money into a bank account and hold it as trustee for us.
- 9.7 We will not be liable, at common law, in contract or in tort or otherwise, for any costs, damages, expenses or losses incurred by you or any third party as a result of any action taken under clauses 9.1 to 9.6 (inclusive).

10. PPS Law

- 10.1 Clauses 10.1 to 10.11 (inclusive) apply to the extent that these terms and conditions provide for or contain a 'security interest' for the purposes of the Personal Property Securities Act 2009 (Cth) (**PPS Law**) (or part of it).
- 10.2 You agree, to the extent possible under PPS Law, that all collateral which is at any time subject to our security interest secures as a 'purchase money security interest' (**PMSI**) the purchase price of all collateral supplied to you. Clauses 10.1 to 10.11 do not limit what other amounts are secured under these terms and conditions.
- 10.3 You agree that payments to us will be applied in the following order:
- to obligations that are not secured, in the order in which those obligations were incurred;
 - to obligations that are secured, but not by PMSIs, in the order in which those obligations were incurred;
 - to obligations that are secured by PMSIs, in the order in which those obligations were incurred.
- 10.4 We may register our security interest as a PMSI. You must do anything (such as obtaining consents and signing documents) which we require for the purposes of:
- ensuring that our security interest is enforceable, perfected and otherwise effective under the PPS Law;
 - enabling us to gain first priority (or any other priority agreed to by us in writing) for our security interest; and
 - enabling us to exercise rights in connection with the security interest, and to assure performance of your obligations, you hereby give us an irrevocable power of attorney to do anything we consider you should do under these conditions.
- 10.5 Our rights under these terms and conditions are in addition to and not in substitution for our rights under other law (including the PPS Law) and we may choose whether to exercise rights under these terms and conditions, and/or under such other law, as we see fit.
- 10.6 In respect of Goods that are not used predominantly for personal, domestic or household purposes, the following provisions of the PPS Law do not apply and, for the purposes of section 115 of the PPS Law are "contracted out" of these terms and conditions:
- sections 95 (notice of removal of accession to the extent it requires us to give a notice to you), 96 (retention of accession), 125 (obligations to dispose of or retain collateral);
 - section 130 (notice of disposal to the extent it requires us to give a notice to you);
 - section 132(3)(d) (contents of statement of account after disposal);
 - section 132(4) (statement of account if no disposal);
 - section 135 (notice of retention);
 - section 142 (redemption of collateral); and
 - section 143 (re-instatement of security agreement).
- 10.7 The following provisions of the PPS Law confer rights on us:
- section 123 (seizing collateral);
 - section 126 (apparent possession);
 - section 128 (secured party may dispose of collateral);
 - section 129 (disposal by purchase); and
 - section 134(1) (retention of collateral).
- 10.8 You agree that in addition to those rights, we will, if there is default by you, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any Goods, not only under those sections but also, as additional and independent rights, under these terms and conditions and you agree that we may do so in any manner we see fit including (in respect of dealing and disposal) by private or public sale, lease or licence.
- 10.9 You waive your rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law.
- 10.10 You and we agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. You must do everything necessary on your part to ensure that section 275(6)(a) of the PPS Law continues to apply. The agreement in this clause 10.10 is made solely for the purpose of allowing us the benefit of section 275(6)(a) and we will not be liable to pay damages or any other compensation or be subject to injunction if we breach this clause 10.10.
- 10.11 You must not dispose or purport to dispose of, or create or purport to create or permit to be created any 'security interest' (as defined in PPS Law) in the collateral other than with our express written consent.

11. Statutory warranties

- 11.1 Terms, conditions, warranties and guarantees implied by law, including the Australian Consumer Law, that cannot be excluded, restricted or modified apply to our supply of Goods to you under these terms and conditions to the extent required by that law.
- 11.2 We exclude all other terms, conditions, warranties and guarantees which would otherwise be implied concerning the activities covered by these terms and conditions.

12. Limitation of liability

- 12.1 Where we are permitted by law to limit our liability, our maximum aggregate liability to you for any tort (including negligence), breach of contract, breach of statutory duty, breach of a consumer guarantee or otherwise, is limited at our option to:
- replacement of the Goods or the supply of equivalent goods; or
 - repair of the Goods; or
 - payment of the cost of replacing the Goods or of acquiring equivalent goods; or payment of the cost of having the Goods repaired.
- 12.2 Except as otherwise provided in these terms and conditions, we are not liable to you for any direct, indirect or consequential loss or damage, economic loss, loss of goodwill or reputation, loss of actual or anticipated profits or revenue, loss of anticipated benefits or savings, loss of any prospect or business opportunity, loss of production or other business interruption and claims made by any third party.

13. Unexpected delay

We are not responsible for delay caused by something outside our reasonable control which makes performance in the usual way impractical. Without limiting those general words, that applies where we have problems due to accidents, strikes, transport difficulties or stock shortages.

14. Variation of terms and conditions

- 14.1 These terms and conditions may be changed by us, by giving you notice of the change. Notice is deemed given (whether or not actually received) when we do any of the following:
- send notice of the change to you at any address (including an email address) supplied by you; or
 - publish the amended terms and conditions on our web sites at www.pharmacare.com.au/tandcs.

15. Privacy and personal information

We collect, use, store and disclose personal information in accordance with our Privacy Policy, which you acknowledge you have had an opportunity to read and understand. You can access the current policy from our web site at <http://pharmacare.com.au>, or contact us on +61 2 9997 1466 or by email at webenquiries@pharmacare.com.au to request a copy.

16. Not a consumer contract

Unless you acquire Goods from us directly as a retail consumer, you agree that your acquisition of the Goods is not for personal, domestic or household use or consumption, and any binding commitment incorporating these terms and conditions is not a 'consumer contract' for the purposes of the Competition and Consumer Act 2010 (Cth).

17. Applicable law

Any agreement containing these terms and conditions is deemed to be an agreement made in and governed by the law of Australia and New South Wales, and the parties submit their disputes to the non-exclusive jurisdiction of the courts of New South Wales.