

Terms & Conditions

1 Definitions

- 1.1 'Agreement' means this document and any annexures.
- 1.2 'Affiliate' means the Affiliate pharmacy (or any person acting on behalf of and with the authority of the Affiliate pharmacy) as described on any quotation, work authorisation or other form as provided by the NCC to the Affiliate.
- 1.3 'Customer' means a consumer who is prescribed medication which must be compounded who presents that prescription to the Affiliate to be filled.
- 1.4 'Guarantee' means that person (or persons), or entity, who agrees to be liable for the debts of the Affiliate on a principal debtor basis.
- 1.5 'Goods' shall mean Goods supplied by NCC to the Affiliate and are as described on the price list, invoice, or any other forms as provided by NCC to the Affiliate.
- 1.6 'A fee for service' shall mean the fee to be paid by NCC to the Affiliate healthcare professional and the amount will be based on the volume of sales from Customers generated in a given month.
- 1.7 'Price' shall mean the price payable for the Goods as agreed between NCC and the Customer.
- 1.8 'NCC' means partnership of The Gooding Drive Pharmacy Trust and the The Carrara Pharmacy Trust ABN 17 971 220 310 trading as National Custom Compounding.

2 The Competition and Consumer Act 2010 ("CCA") and Fair Trading Acts ("FTA")

- 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the CCA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

3 Price And Payment

- 3.1 At NCC's sole discretion the Price shall be as indicated on pricelists provided by NCC to the Affiliate in respect of Goods supplied or as quoted from time to time.
- 3.2 The A fee for service will be a percentage of the total Customer sales for the previous month. The applicable percentage increases when sales benchmarks are exceeded, in accordance with the percentages and benchmarks as agreed from time to time. The fee for service reduces the payment due under clause 3.5.
- 3.3 NCC reserves the right to change the Price in the event of a variation to NCC's quotation and NCC may vary its recommended retail price at any time by giving at least 14 days written notice to the Affiliate.
- 3.4 The Affiliate acknowledges that any government related increases in costs (including but not limited to tariffs, levies, taxes and charges) are included in the quoted Incentive.
- 3.5 Payment to NCC of the Affiliates' total Customer sales payments for the previous month shall be due fourteen (14) days following that end of the month.
- 3.6 Time for payment for the Goods shall be of the essence and will be stated on the invoice, statement or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 3.7 Payment will be made by cash, cheque, bank cheque, by direct credit, by credit card (VISA, MasterCard or AMEX), or by any other method as agreed to between the Affiliate and NCC. Some payment methods may attract a surcharge.

4 Delivery Of Goods



4.1 The Affiliate shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Affiliate is unable to take delivery of the Goods as arranged then NCC shall be entitled to charge a reasonable fee for redelivery.

4.2 Delivery of the Goods to a third party nominated by the Affiliate is deemed to as delivery to the Affiliate for the purposes of this Agreement.

4.3 The failure of NCC to deliver shall not entitle either party to treat this contract as repudiated.

4.4 NCC shall not be liable for any loss or damage, due to failure by NCC to deliver the Goods (or any of them) promptly or at all, due to circumstances beyond the control of NCC.

4.5 Where the Affiliate has signed for Full Delivery of items, NCC will not be responsible for later claims of missing cartons.

5 Distribution

5.1 The Affiliate will accept prescriptions for compounded medicines from its Customers and forward same to NCC to produce, before accepting delivery of those medicines from NCC to sell to its Customers.

5.2 The Affiliate will not:

- (a) represent to any person that it is an agent of NCC;
- (b) pledge or purport to pledge NCC's credit;
- (c) commit or purport to commit NCC to any contracts; or
- (d) otherwise incur any liability or potential liability on behalf of NCC.

5.3 Neither party will take any action or do anything which would or would be likely to damage the reputation or goodwill of the other party, or bring the other party into disrepute.

5.4 NCC will provide any information and support reasonably requested by the Affiliate to enable the Affiliate to properly and efficiently counsel its Customers and perform this Agreement, if required by the Affiliate.

5.5 The dispensing pharmacist remains NCC for the purposes of the law.

(a) The Affiliate shall not alter in anyway the dispense label attached to the Customer compounded medicine. Doing so will breach these terms and conditions.

(b) Any manipulation or changes of the final Customer compounded medicine will result in the Affiliate taking full responsibility as the compounding and dispensing pharmacist.

(c) NCC will take all necessary actions required after identifying that (a) and/or (b) have taken place and therefore the Affiliate arrangement can be terminated at the direction of NCC.

6 Purchase Orders

6.1 The Affiliate shall order from NCC at the direction of the Customer, such compounded medicines as are required by the Affiliate's Customers from time to time unless NCC is unable to supply such medicine.

6.2 The Affiliate will place orders for Goods on behalf of the customer with NCC via order.customcompounding.com.au / 'the order portal', and the affiliate will complete all required customer order details and attached a scanned image of the Customer's prescription. The physical prescription will then be posted to NCC that same day.

7 Recommended Retail Price

7.1 NCC will provide the Affiliate a list of prices at which the Goods must be sold. The Affiliate must not change the price or tamper with the label affixed by NCC or the medicines' packaging or contents.

8 Risk

8.1 NCC retains ownership of the Goods nonetheless, all risk for the Goods passes to the Affiliate on delivery.



8.2 If any of the Goods are damaged or destroyed following delivery but prior to the affiliate providing the Goods to the customer, NCC is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by NCC is sufficient evidence of NCC's rights to receive the insurance proceeds without the need for any person dealing with NCC to make further enquiries.

9 Dealings

9.1 The Affiliate shall not sub-contract, transfer, assign or otherwise arrange for another person to perform any part of this Agreement or to discharge any of its obligations under any part of this Agreement without the prior written consent of NCC.

9.2 In the event NCC consents to a sub-contract, assignment or transfer, the Affiliate shall not be relieved of any of its liabilities or obligations under this Agreement and the Affiliate shall be liable to NCC for the acts, defaults and omissions of any sub-contractor or any employee or agent of the sub-contractor as if they were the acts, defaults or omissions of the Dispenser or the employees or agents of the Affiliate.

10 Privacy Act 1988

10.1 The Affiliate will comply with the Privacy Act 1988 and all subsequent amendments and ensure that the Customer's information is kept private and that Customers are made aware that their identifying information is being shared with NCC.

11 Credit Trading

11.1 If payment is not received by NCC in accordance with Clause 3.5 then the Affiliate accepts that NCC may undertake appropriate action to enforce collection of outstanding debts.

11.2 Appropriate action includes, but is not limited to, use of a commercial debt recovery agent and the instigation of legal proceedings.

11.3 The Affiliate understands that if such action as indicated in Clauses 11.2 and 11.3 is undertaken by NCC that ALL expenses incurred by NCC pertaining to this course at recovery action shall be borne in total by the Affiliate.

12 Duration and Termination

12.1 This Agreement shall commence on the Commencement Date and shall remain in force until it is terminated in accordance with clause 12.3 or if either party gives written notice to the other party with not less than sixty (60) days notice to terminate this Agreement.

12.2 The Parties may terminate this Agreement at any time upon mutual consent in writing to that effect.

12.3 Either party may terminate this Agreement immediately by giving written notice to the other party (the Defaulting Party) if the Defaulting Party:

- (a) becomes unable to pay its debts as and when they fall due;
- (b) has a receiver or receiver and manager of any of its assets appointed;
- (c) goes into liquidation (other than for the purposes of amalgamation or reconstruction) or has an administrator or controller appointed to its affairs; or commits a breach of this Agreement, which is incapable of remedy.

12.4 Without limiting the effect of clause 12 NCC may terminate this Agreement by giving written notice to the Affiliate if the Affiliate does or allows to be done anything that brings the goodwill associated with the Goods or NCC into disrepute.

12.5 The termination of this Agreement shall not affect any claim either party may have against the other in respect of the period prior to termination or the ongoing enforceability of its provisions, which shall not merge on termination but continue to subsist.

13 Termination Consequences



13.1 Upon the expiry or the sooner termination of this Agreement:

- (a) all orders submitted by the Affiliate that have not been filled, shall be deemed to be cancelled save to the extent that any such orders must be filled to allow the Affiliate to meet its obligations to any of their customers for outstanding Affiliate orders PROVIDED that if the Affiliate determines not to meet its obligations to any such customers and notifies NCC of the same, NCC may do so itself or through another party of its choosing without payment of any compensation to the Affiliate.
- (b) the Affiliate must cease using any Intellectual Property of NCC or of any other person that relates to the Goods;
- (c) the Affiliate must modify the Affiliate's website to remove all references to the availability of the Goods from or through the Affiliate;
- (d) the Affiliate must remove all signage on or in its premises, that relates to the Goods or includes any of the NCC Trade Marks;
- (e) the Affiliate must provide to NCC every copy of any Affiliate lists concerning the Agreement, including any copies stored in any electronic medium;
- (f) the Affiliate must pay all monies owed to NCC; and
- (g) NCC shall remove all links to the Affiliate's website from NCC's websites.

13.2 The Affiliate shall during the period of two (2) months after the date of termination or expiration of this Agreement provide to NCC the names of all persons inquiring about or requesting any Goods from the Affiliate immediately on application being made by those persons to the Affiliate.

14 Indemnity

14.1 The Affiliate shall indemnify and keep indemnified NCC against any action, damage, proceeding, liability, claim, demand or loss suffered by NCC in connection with the Affiliate's marketing and supply of the Goods or any breach by the Affiliate of this Agreement, except to the extent that any such action, loss, damage, claim or liability is caused or contributed to by the negligent act or omission of NCC, its employees or contractors.

14.2 The Affiliate will maintain an adequate general liability insurance policy and will take all such action necessary to maintain such policies or substantially equivalent policies in full force and effect throughout the term of this Agreement. This document will be available to be supplied to NCC on request. NCC will be named on the policies as an interested party.

14.3 Notwithstanding any other term of this Agreement, the Affiliate or its employees or contractors are solely responsible for counselling Customers competently and professionally with the aim of avoiding errors, including but not limited to contraindications, dosage and other Customer related factors.

15 Confidentiality

15.1 The parties agree that in the course of the performance of this Agreement, both parties will acquire valuable and confidential information or trade secrets of a special and unique nature and value relating to each other's business and financial condition, including, without limitation, such matters as operating procedures, manuals, confidential reports, plans, pricing techniques relating to the existing and contemplated businesses and services, methods of obtaining clients, credit and financial data of present and prospective clients, etc. (the Confidential Information). In view of the foregoing and the consideration exchanged, both parties agree to:

- (a) hold all Confidential Information in trust and confidence and only use the Confidential Information solely for the purposes of carrying out their obligations pursuant to this Agreement;
- (b) maintain and take all steps necessary to maintain all Confidential Information in the strictest



confidence and ensure that proper and secure storage is provided for the Confidential Information while in their possession or control;

(c) take all precautions necessary to prevent accidental disclosure of any of the Confidential Information;

(d) not disclose any of the Confidential Information to any person other than those of their agents, officers or employees who are required to receive the Confidential Information in the course of (and solely for the purpose of) carrying out their obligations pursuant to this Agreement; and

(e) not make copies of any Confidential Information except to the extent necessary to carry out its obligations pursuant to this Agreement.

16 General

16.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable - the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

16.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland and are subject to the jurisdiction of the law Courts of Queensland.

16.3 NCC shall be under no liability whatsoever to the Affiliate for any indirect loss and/or expense (including loss of profit) suffered by the Affiliate arising out of a breach by NCC of these terms and conditions.

16.4 In the event of any breach of this contract by NCC, the remedies the Affiliate shall be limited to damages, which under no circumstances shall exceed the Price of the Goods.

16.5 The Affiliate shall not be entitled to set off against or deduct from, the Price any sums owed or claimed to be owed to the Affiliate by NCC.

16.6 NCC may license or sub-contract all or any part of its rights and obligations without the Affiliate's consent.

16.7 Nothing in this Agreement creates or is intended to create an association, trust, partnership, joint venture or any other entity or similar legal relationship between the parties, or impose a trust, partnership or fiduciary duty, obligation, or liability on or with respect to either party. Neither party is or shall act as or be the agent or representative of the other party.

16.8 The Affiliate agrees that NCC may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which NCC notifies the Affiliate of such change. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party. The failure by NCC to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it effect NCC's right to subsequently enforce that provision.

