



## Terms & Conditions

### 1 Definitions

- 1.1 'Company' shall mean National Custom Compounding Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of National Custom Compounding international Pty Ltd.
- 1.2 'Customer' shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by the Company to the Customer.
- 1.3 'Guarantee' means that person (or persons), of entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.
- 1.4 'Goods' shall mean Goods supplied by the Company to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Company to the Customer.
- 1.5 'Price' shall mean the price payable for the Goods as agreed between the Company and the Customer in accordance with clause 3 of this contract.

### 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 the Company's sole discretion the Price shall be either,
- (a) as indicated on invoices provided by the Company to the Customer in respect of Goods supplied;
- (b) the Company's quoted Price (subject to clause 3.2) which shall be binding upon the Company provided that the Customer shall accept the Company's quotation in writing within thirty (30) days; or
- (c) the Wholesale Percentage off the Company's recommended retail price prevailing at the time a Purchase Order is placed by the Customer.
- 3.2 The Company reserves the right to change the Price in the event of a variation to the Company's quotation and the Company may vary its recommended retail price at any time by giving at least 14 days written notice to the Customer.
- 3.3 The Customer acknowledges that any government related increases in costs (including but not limited to tariffs, levies, taxes and charges) are immediately passed on to the Customer.
- 3.4 At the Company's sole discretion:
- (a) payment shall be due prior to delivery of the Goods; or
- (b) payment for approved Customer's shall be due thirty (30) days following the end of the month in which a Tax Invoice is dated and forwarded to the Customer's address or address for notices.
- 3.5 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 3.6 Payment will be made by cash, cheque, bank cheque, by direct credit, by credit card (VISA or MasterCard), or by any other method as agreed to between the Customer and the Company. Some payment methods may attract a surcharge.
- 3.7 GST and other taxes and duties that may be applicable shall be added to the Price.

### 4 Delivery Of Goods

- 4.1 At the Company's sole discretion delivery of the Goods shall take place when,
- (a) the Customer takes possession of the Goods at the Company's address; or
- (b) the Customer takes possession of the Goods at the Customer's nominated address.
- 4.2 At the Company's sole discretion the costs of delivery are:
- (a) included in the Price; or
- (b) in addition to the Price.
- 4.3 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then the Company shall be entitled to charge a reasonable fee for redelivery.
- 4.4 Delivery of the Goods to a third party nominated by the Customer is deemed to as delivery to the Customer for the purposes of this agreement.
- 4.5 The failure of the Company to deliver shall not entitle either party to treat this contract as repudiated.
- 4.6 The Company shall not be liable for any loss or damage, due to failure by the Company to deliver the Goods (or any of them) promptly or at all, due to circumstances beyond the control of the Company.
- 4.7 Where the Customer has signed for Full Delivery of items, the Company will not be responsible for later claims of missing cartons.

### 5 Distribution

- 5.1 The Customer will during the Term accept scripts for compounded medicines from its patients and forward same to the Company to produce, before accepting delivery of those medicines from the Company to sell to its patients.
- 5.2 The Customer will not:
- (a) represent to any person that it is an agent of the Company;
- (b) pledge or purport to pledge the Company's credit;
- (c) commit or purport to commit the Company to any contracts; or
- (d) otherwise incur any liability or potential liability on behalf of the Company.
- 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 The Company will provide any information and support reasonably requested by the Customer to enable the Customer to properly and efficiently counsel its

patients and perform this Agreement.

### 6 Purchase Orders

- 6.1 The Customer shall order exclusively from the Company, such compounded medicines as are required by the Customer's patients from time to time unless the Company is unable to supply such medicine.
- 6.2 The Customer will place orders for Products with the Company via email to the Company's Email (the **Purchase Order**) with a scanned image of the patient's script.
- 6.3 It is further agreed that:
- (a) where practicable the Goods shall be kept separate until the Company shall have received payment and all other obligations of the Customer are met; and
- (b) until such time as ownership of the Goods shall pass from the Company to the Customer the Company may give notice in writing to the Customer to return the Goods or any of them to the Company. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
- (c) the Company shall have the right of stopping the Goods in transit whether or not delivery has been made; and
- (d) if the Customer fails to return the Goods to the Company then the Company or he Company's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods; and
- (e) the Customer is only a bailee of the Goods and until such time as the Company has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods on trust for the Company.

### 7 Recommended Retail Price

- 7.1 The Company will provide the Customer a list of prices at which the Products may be sold. This list is provided by way of recommendation only and there is no obligation on the Customer to sell the Products at the prices recommended by the Company.
- 7.2 The Customer will, however, use reasonable endeavours to sell the Products at a price close to the price contained within the Company's recommended retail price prevailing at the time a Purchase Order is placed by the Customer.

### 8 Risk

- 8.1 If the Company retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
- 8.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Company is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Company is sufficient evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.

### 9 Title

- 9.1 The Company and Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid the Company all amounts owing for the particular Goods; and
- (b) the Customer has met all other obligations due by the Customer to the Company in respect of all contracts between the Company and the Customer relating to the goods.
- 9.2 Receipt by the Company of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Company's ownership or rights in respect of the Goods shall continue.
- 9.3 It is further agreed that;
- (a) where practicable the Goods shall be kept separate until the Company shall have received payment and all other obligations of the Customer are met; and
- (b) until such time as ownership of the Goods shall pass from the Company to the Customer the Company may give notice in writing to the Customer to return the Goods or any of them to the Company. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
- (c) the Company shall have the right of stopping the Goods in transit whether or not delivery has been made; and
- (d) if the Customer fails to return the Goods to the Company then the Company or he Company's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods; and
- (e) the Customer is only a bailee of the Goods and until such time as the Company has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods on trust for the Company.

### 10 Dealings

- 10.1 The Customer 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 the Company.
- 10.2 In the event the Company consents to a sub-contract, assignment or transfer pursuant to clause 10.1, the Customer shall not be relieved of any of its liabilities or obligations under this Agreement and the Customer shall be liable to the Company 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 Customer.

### 11 Conflict of Interest

- 11.1 The Customer warrants that to the best of its knowledge no conflict of interest exists or is likely to arise in the performance of its obligations under this Agreement.



- 11.2 The Customer shall not, during the course of this Agreement, engage in any activity likely to compromise the ability of the Company to perform its obligations under this Agreement fairly and independently. The Customer shall immediately disclose to the Company any activity which constitutes or may constitute a conflict of interest.
- 12 Defects**
- 12.1 The Customer shall inspect the Goods on delivery and shall within fourteen (14) days of delivery (time being of the essence) notify the Company of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Company an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Company has agreed in writing that the Customer is entitled to reject, the Company's liability is limited to replacing the Goods or applying a Credit to the Customer's account to the value charged for the Goods
- 13 Returns**
- 13.1 Returns will only be accepted provided that;
- (a) the Customer has complied with the provisions of clause 12.1; and
  - (b) the Customer can provide proof of purchase from the Company. ALL credits MUST carry the Tax Invoice number & product code; and
  - (c) the Goods are returned in a manner prescribed by the Company. This includes, but is not limited to, collection by a sales representative of the Company or alternate means as authorised by the Credit Department; and
  - (d) the Company will not be liable for Goods which have not been stored or used in a proper manner; and
  - (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances
- 14 Credit**
- 14.1 Credits directly contribute to price rises and higher freight charges. Any discrepancies must be notified immediately to the Credit Department on (Tel) 1300 731 755 or (Fax) 07 5526 6207.
- 14.2 All stock returned for Credit (whether the stock is incorrect, damaged, or other) is to be placed aside, together with a copy of the Tax Invoice pertaining to the delivered Goods. Stock is NOT to be written on by the Customer. Resalable stock returned to the Company without correct packaging, or marked, will NOT be credited.
- 14.3 Stock sold as a 'unit' MUST be returned as an entire unit, unless faulty. When stock is collected by a sales representative of the Company, it is the responsibility of the Customer to ensure a numbered credit application form is received - detailing the nature of the credit, as future queries on the part of the Customer cannot be examined without this paperwork.
- 14.4 Customers have the option of exchanging low value credits for stock of same, or similar, value that is carried by a Company sales representative, if this is unsuitable, the Customer should apply for a standard retail credit.
- 14.5 Goods returned to the Company with store labels, pricing tickets or other retail markings will not be accepted for full credit.
- 15 Privacy Act 1988**
- 15.1 The Customer and/or the Guarantor/s agree for the Company to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by the Company.
- 15.2 The Customer and/or the Guarantor/s agree that the Company may exchange information about the Customer and the Guarantor/s with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes;
- (a) to assess an application by Customer; and/or
  - (b) to notify other credit providers of a default by the Customer; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other Credit providers; and/or
  - (d) to assess the credit worthiness of Customer and/or Guarantor/s.
- 16 Credit Trading**
- 16.1 Pursuant to Clause 3.3(b), once a Customer is approved for Credit Trading Account with the Company, the Customer will be granted fourteen (14) days following the end of month in which a Tax Invoice is dated and forwarded to the Customer to effect payment in FULL.
- 16.2 If payment is not received by the Company in accordance with Clause 11.1 (above), then the Customer accepts that the Company may undertake appropriate action to enforce collection of outstanding debts.
- 16.3 Appropriate action includes, but is not limited to, use of a commercial Debt Recovery agent, the instigation of legal proceedings, or other.
- 16.4 The Customer understands that if such action as indicated in Clauses 11.2 and 11.3 is undertaken by the Company that ALL expenses incurred by the Company pertaining to this course at recovery action shall be borne in total by the Customer.
- 17 Duration and Termination**
- 17.1 This Agreement shall commence on the Commencement Date and shall remain in force for the Term, unless terminated earlier in accordance with clause 17.3 or 17.4. The Term of the agreement shall automatically be extended for further periods of one (1) year (a Renewal Period) at the expiry of the Term and at the end of each Renewal Period, unless either party gives written notice to the other party, not later than sixty (60) days before the end of the Term or the relevant Renewal Period, to terminate this Agreement.
- 17.2 The Parties may terminate this Agreement at any time upon mutual consent in writing to that effect.
- 17.3 Either party may terminate this Agreement 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; or
  - (c) goes into liquidation (other than for the purposes of amalgamation or reconstruction) or has an administrator or controller appointed to its affairs; or
  - (d) commits a breach of this Agreement, which is incapable of remedy or which the Defaulting Party fails to remedy within thirty (30) days of being advised of it in writing.
- 17.4 Without limiting the effect of clause 17.3, the Company may terminate this Agreement by giving written notice to the Customer if the Customer does or allows to be done anything that brings the goodwill associated with the Products or the Company into disrepute.
- 17.5 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.
- 18 Termination Consequences**
- 18.1 Upon the expiry or the sooner termination of this Agreement:
- (a) all orders submitted by the Customer 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 Customer to meet its obligations to any of their customers for outstanding customer orders PROVIDED that if the Customer determines not to meet its obligations to any such customers and notifies the Company of the same, the Company may do so itself or through another party of its choosing without payment of any compensation to the Customer.
  - (b) the Customer must cease using any Intellectual Property of the Company or of any other person that relates to the Products;
  - (c) the Customer must modify the Customer's website to remove all references to the availability of the Products from or through the Customer;
  - (d) the Customer must remove all signage on its premises, vehicles or equipment that relates to the Products or includes any of the Trade Marks;
  - (e) the Customer must provide to the Company every copy of any customer lists concerning the Agreement, including any copies stored in any electronic medium;
  - (f) the Customer must pay all monies owed to the Company; and
  - (g) the Company shall remove all links to the Customer's website from the Company's websites.
- 18.2 The Customer shall during the period of two (2) months after the date of termination or expiration of this Agreement provide to the Company the names of all persons inquiring about or requesting any Products from the Customer immediately on application being made by those persons to the Customer.
- 19 Indemnity**
- 19.1 The Customer shall indemnify and keep indemnified the Company against any action, damage, proceeding, liability, claim, demand or loss suffered by the Company in connection with the Customer's marketing and supply of the Products or any breach by the Customer 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 the Company, its employees or contractors.
- 19.2 The Customer 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 the Company on request. The Company will be named on the policies as an interested party.
- 19.3 Notwithstanding any other term of this Agreement, the Customer or its employees or contractors are solely responsible for counselling patients competently and professionally with the aim of avoiding errors, including but not limited to contraindications, dosage and other patient related factors.
- 20 Warranty**
- 20.1 For Goods not manufactured by the Company, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Company shall not be bound by, nor be responsible for, any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods
- 21 Confidentiality**
- 21.1 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.
- 22 General**
- 22.1 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.
- 22.2 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.
- 22.3 The Company shall be under no liability whatsoever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Company of these terms and conditions.
- 22.4 In the event of any breach of this contract by the Company, the remedies the Customer shall be limited to damages, which under no circumstances shall exceed the Price of the Goods.
- 22.5 The Customer shall not be entitled to set off against or deduct from, the Price any sums owed or claimed to be owed to the Customer by the Company.
- 22.6 The Company may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 22.7 The Customer agrees that the Company 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 the Company notifies the Customer 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 the Company to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it effect the Company's right to subsequently enforce that provision.