

## VITAL MEDICAL SUPPLIES - TERMS AND CONDITIONS OF SUPPLY OF GOODS

These terms and conditions ('Terms') apply whenever Vital Medical Supplies (a division of EBOS Group Australia Pty Limited ABN 38 125 401 247) ('VITAL') supplies any products ('Goods') to any person ('the customer'), unless expressly agreed otherwise in writing. By requesting the supply of Goods from VITAL, the customer acknowledges and agrees to the Terms.

VITAL may at any time amend these terms or the list price upon notice to the customer. An amendment will not affect any order accepted by VITAL on or prior to the time that the terms were notified to the customer (which may be by way of update via VITAL's website or such other means as VITAL considers is appropriate). The customer's placement of any order after receipt of such notice will constitute deemed acceptance by the customer of the amended terms.

### 1. SALE AND PURCHASE

- 1.1. VITAL agrees to sell and the customer agrees to purchase the Goods referred to on a purchase order issued by the customer and accepted by VITAL.
- 1.2. VITAL may decline part or all of any purchase order received from the customer for any reason (including where Goods are out of stock or otherwise unavailable) by notifying the customer prior to issuing an invoice for the relevant Goods.
- 1.3. If VITAL declines any purchase order under clause 1.2 and some or all of the Goods are out of stock, the customer may request VITAL to place those out of stock Goods on backorder ('Backorder'). If VITAL accepts the customer's request, the following provisions apply:
  - (a). notwithstanding clause 2.1, payment for the Goods is due in full, without deduction, withholding or set-off of any kind, immediately on acceptance of the Backorder by VITAL;
  - (b). VITAL will endeavour to procure the Goods specified in the Backorder within 90 days (or such longer period as agreed) of acceptance of the Backorder; and
  - (c). if VITAL is not able to procure the Goods specified in the Backorder within the period as specified in clause 1.3(b), VITAL or the Customer may cancel the Backorder by notifying the other party, and VITAL will refund any payments made by the Customer under clause 1.3(a).
- 1.4. Subject to clause 1.3, the customer cannot cancel any purchase order for Goods after issue by the Customer and accepted by VITAL and is bound to pay the price for those Goods, unless VITAL expressly agrees otherwise in writing.

### 2. PAYMENT

- 2.1. Payment for the Goods is due in full, without deduction, withholding or set-off of any kind, twenty days from the date of the statement issued by VITAL. Payment by Credit or Charge Card will be accepted provided arrangement has been made to do so prior to purchase. Credit or Charge Cards may not be used to pay accounts that are overdue unless the customer agrees to pay the merchant fees applicable.
- 2.2. Interest may be charged on amounts that are overdue from the due date for payment until payment in full and will be calculated at the Commonwealth Bank overdraft index rate ruling at the time.

### 3. PRICING

- 3.1. Unless otherwise agreed in writing, the price charged shall be the list price at the time of placing the order. Verbal quotations are not binding on VITAL unless confirmed in writing. Written quotations are only valid for one calendar month unless otherwise stated. VITAL may vary its prices at any time.

### 4. GST

- 4.1. In this clause 4:
  - (i) the expressions Consideration, Input Tax Credit, Recipient, Supply, Tax Invoice and Taxable Supply have the meanings given to those expressions in the GST Act; and
  - (ii) Supplier means any party treated by the GST Act as making a Supply under a Contract.
- 4.2. Unless otherwise expressly stated, all prices or other sums payable or Consideration to be provided under or in accordance with these Terms are exclusive of GST.
- 4.3. If GST is imposed on any Supply made under or in accordance with these Terms, the Recipient of the Taxable Supply must pay to the Supplier an additional amount equal to the GST payable on or for the Taxable Supply, subject to the Recipient receiving a valid Tax Invoice in respect of the Supply.
- 4.4. Payment of the additional amount must be made at the same time and in the same way as payment for the Taxable Supply required to be made in accordance with these Terms.

### 5. WARRANTY

- 5.1. Except as set out in these Terms or otherwise expressly agreed in writing, all conditions, representations, warranties, terms and undertakings, whether express or implied, are excluded to the maximum extent permitted by law. Nothing in these Terms excludes, restricts or modifies any rights that customers may have under the Australian Consumer Law or any other rights and which by law cannot be excluded.

### 6. RETURNS

- 6.1. This Clause 6 does not apply to goods purchased by customers who are consumers within the meaning of the Australian Consumer Law and where the return is made because the goods do not comply with the consumer guarantees under the Australian Consumer Law.
- 6.2. If the customer wishes to return the Goods, the customer must request a Returned Goods Authorisation (RGA). The customer may only return the goods upon receiving an RGA number for VITAL. When requesting an RGA, the original invoice number is required to be quoted. All returned goods must be properly packed, clearly labelled with the RGA number, and returned via VITAL's nominated means.
- 6.3. To the extent permitted by law, returns will not be accepted if:

- (a) the Goods were delivered more than 24 hours prior to the request for return;
- (b) the Goods are returned incomplete, or have been used;
- (c) the Goods are received by VITAL in a damaged or unsaleable condition, or are not in their original unopened packaging;
- (d) the Goods were not stored and/or shipped back to VITAL in accordance with the manufacturer's or VITAL's recommendations;
- (e) the Goods are not normal VITAL stock items and have been procured by VITAL to meet a specific customer requirement;
- (f) the Goods are not returned to VITAL's nominated warehouse;
- (g) the Goods have expired;
- (h) the Goods are cold chain category products; or
- (i) the Goods are no longer required because of the customer's change of mind.

6.4 If it is determined that the customer was not entitled to return the Goods (for example, clause 6.3 applied in respect of the Goods), VITAL may charge a re-stocking fee (the greater of 15% of the cost of the Goods returned or \$30) together with any other charges (including freight) incurred by VITAL in connection with such return. If a handling fee was charged at the time of the purchase of the Goods, the customer will not be entitled to a refund or credit of that handling fee.

## **7. DELIVERY AND RISK**

- 7.1 The risk in the Goods shall pass to the customer immediately upon delivery or, where the customer is to arrange delivery, when the Goods are made available for collection by the customer or its carrier.
- 7.2 Any time stated for delivery is an estimate only. VITAL is not liable for any delay in delivery (howsoever caused), nor for any failure to deliver caused by the customer's failure to provide VITAL with adequate delivery instructions or any other instructions relevant to the supply of the goods. Any such delay or failure does not give the customer a right to reject the goods. This sub-clause 7.2 is subject to any rights the customer may have under the Australian Consumer Law.

## **8. TITLE**

- 8.1 The property in Goods shall not pass from VITAL until the customer's indebtedness to VITAL pursuant to any invoices from VITAL to the customer in relation to those Goods is paid in full. Until such payment in full is made the customer shall keep the Goods for and on behalf of VITAL in its capacity as a fiduciary and subject to these terms. VITAL authorises the customer to sell or use the Goods, in the ordinary course of the customer's business, as VITAL's fiduciary agent for the account of VITAL only. The proceeds of sale are the property of VITAL and the customer shall hold such proceeds for and on behalf of VITAL in a fiduciary capacity. The customer shall pay such proceeds of sale into a separate account for and on behalf of VITAL and shall keep separate records as to the Goods sold and as to the amounts received. This authority to sell and use the Goods is revoked immediately if a customer default occurs (as described below) or if VITAL revokes that authority in writing.
- 8.2 The customer shall ensure that the Goods are stored in such a way that they do not become spoilt or damaged, are clearly identifiable as the property of VITAL and are not intermingled with the property of the customer or of any other person. The customer shall not in any way alter or treat the Goods so as to change the quality or nature in any way so that they can not be distinguished until such time as full payment has been made as aforesaid. The customer shall notify VITAL in writing of any intended sale of the customer's business, which includes or purports to include the Goods as part of the customer's property. Until payment to VITAL in full, the customer shall grant any security interest over, lease, assign or otherwise deal with the Goods, except as permitted by these Terms or with the written consent of VITAL.

## **9. PERSONAL PROPERTY SECURITIES ACT 2009 (PPSA)**

9.1 The customer acknowledges that these Terms constitute a security agreement which creates a security interest under the Personal Property Securities Act 2009 (Cth) ('PPSA') in favour of VITAL in all Goods and their proceeds supplied by VITAL to the customer at any time to secure the payment of all amounts, and the performance of all obligations, owing by the customer to VITAL in connection with any such Goods. The customer agrees, at its cost, to provide such information, sign such documents and do such other things as VITAL may require in order to enable VITAL to register and perfect that security interest and obtain and maintain a first ranking priority position over the Goods and their proceeds. To the maximum extent permitted by applicable law, the parties agree that:

- (a) the customer waives any right to receive a verification statement under the PPSA in respect of the security interest created by these Terms; and
- (b) the customer waives and, with VITAL's agreement contracts out of, the customer's rights under sections 95, 96, 118, 121(4), 125, 129, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA. Terms defined in the PPSA shall have the same meaning when used in this clause.

## **10. ACCOUNT LIMITS (FOR TRADING ACCOUNTS)**

- (a) Normally VITAL will allow the customer to purchase and continue to purchase Goods as long as the total of the customer's account does not exceed the customer's pre-approved account limit (if applicable).
- (b) VITAL may require further trade references or reports from the customer from time to time and additional information if the customer applies to increase its account limit.
- (c) VITAL may increase or decrease the customer's account limit (if any) at its absolute discretion without notice to the customer.
- (d) The customer agrees that it will, on VITAL's request, also provide VITAL further supporting documentation for the purpose of assessing the customer's credit worthiness.
- (e) In no circumstances is VITAL obliged to approve any application for an increase in the limit of the customer's account.

## **11. CUSTOMER DEFAULT**

11.1 If:

- (a) the customer breaches any provision of these Terms (or any other agreement with VITAL) and this constitutes a material breach;

- (b) the customer suffers any bankruptcy or insolvency event (including the appointment of any liquidator, receiver, administrator or similar officer in respect of the customer or any of its assets; any resolution being passed, proceedings filed or order made for the liquidation, receivership, administration, bankruptcy, winding-up or dissolution of the customer; the customer entering into any compromise or arrangement with its creditors; or any analogous event under the laws of any applicable jurisdiction); or
  - (c) any event occurs or information becomes known to VITAL which, in VITAL's opinion, might materially affect the customer's creditworthiness or the customer's ability or willingness to comply with its obligations under these Terms (or any other agreement with VITAL),  
then without limiting any other right or remedy VITAL may have, VITAL may at any time without notice:
    - (a) suspend or terminate any or all existing and future contracts with the customer for the supply of Goods; or
    - (b) suspend, cancel or vary any credit terms by notice to the customer and require immediate payment of any or all amounts outstanding.
- 11.2 The customer will pay on demand all costs (including legal costs on a solicitor/client basis) incurred by VITAL in connection with any default by the customer, any recovery or attempted recovery of any amount owed by the customer, or any other enforcement action taken by VITAL in connection with these Terms.

## 12. HANDLING

- 12.1 Consumable medical and surgical supplies: All orders with a value exceeding VITAL's "Handling Free Threshold" will be delivered free of handling charges into the local metropolitan area. Orders less than this threshold will attract a handling charge. The Handling Free Threshold and handling charge may be varied from time to time by VITAL on notice to the customer (which may be by way of notification via VITAL's website. VITAL's customer service staff can advise the customer of the applicable threshold and charges on request. All orders outside the metropolitan area will be subject to handling charges which will be invoiced with the Goods. Customer requests for urgent orders regardless of location may be subject to additional freight and handling costs.
- 12.2 Bulk items, Equipment and Furniture: The customer shall pay the cost of any freight and or handling costs associated with the delivery of bulk items, equipment or furniture.
- 12.3 Cold Chain: These products may attract additional handling charges, whether or not the Handling Free Threshold has been met.

## 13. LIABILITY

- 13.1 To the maximum extent permitted by law, including the Australian Consumer Law, VITAL's liability for any defect in the goods or their supply or related services (including any breach of warranty) is limited, at VITAL's option:
- (a) in respect of Goods, to repairing or replacing the Goods (or supplying equivalent goods) or paying the cost of repairing or replacing the Goods or supplying equivalent goods; and
  - (b) in respect of related services, to supplying the services again or payment of the cost of having the services supplied again.
- 13.2 VITAL will not in any circumstances be liable for any consequential, special or indirect loss or damage or for any loss of profit, savings or goodwill.

## 14. FORCE MAJEURE

- 14.1 VITAL will not be liable, and the customer will not be entitled to cancel any purchase order, for any delay or failure by VITAL to perform its obligations under these Terms caused by any event or circumstance beyond VITAL's reasonable control (including fire, accident, earthquake, flood, drought, crime, war, blockade, civil commotion, epidemic, pandemic or outbreaks, medical or other health emergency, strike, lockout or labour dispute, shortage of fuel, power or raw material, inability to procure stock or transport, or acts or omissions by regulatory authorities).

## 15. PRIVACY

- 15.1 The customer consents to VITAL collecting its personal information (as that term is defined in the Privacy Act 1988 (Cth) in order to provide the customer with Goods or services requested. Without this information, VITAL cannot provide Goods and services under these Terms.
- 15.2 VITAL may contact the customer with marketing material about VITAL and VITAL's related businesses that may interest the customer. VITAL may disclose the customer's personal information to its related companies and to third parties who provide VITAL with (or help VITAL provide) products and services and to health care information services providers who may use it. VITAL may provide information to its information technology providers in locations outside the customer's state or territory and to locations overseas such as New Zealand, the USA and Canada.
- 15.3 Except where VITAL may refuse access as permitted by law, the customer can gain access to the personal information VITAL holds about the customer. VITAL's privacy policy (available at [www.vitalmedicalsupplies.com.au](http://www.vitalmedicalsupplies.com.au)) states how the customer can seek to access or correct any personal information VITAL holds about the customer, how to complain about a privacy breach by VITAL and how VITAL will deal with a privacy complaint. You can contact us at [privacy@ebosgroup.com](mailto:privacy@ebosgroup.com).

## 16. RESUPPLY

- 16.1 The customer must not resupply the Goods outside Australia without VITAL's prior written consent.

## 17. USE OF VITAL MEDICAL SUPPLIES WEBSITE

- 17.1 Information on website

The information contained VITAL's website at [www.vitalmedicalsupplies.com.au](http://www.vitalmedicalsupplies.com.au) ('Website') is for general information purposes only. Advice received via the Website should not be relied upon for personal, medical, legal or financial decisions and customers should consult an appropriate professional for specific advice tailored to their situation. Customers acknowledge that the information available on the Website may be modified, updated or replaced by VITAL from time to time without notice. VITAL does not warrant that the information contained on the Website is accurate, complete, current, virus-free, error-free or complies with any legislation or regulations other than those in Australia. VITAL shall have no liability with respect to any claims arising from the use of the information on the Website however arising.

## 17.2 Security and Cookies

Customers acknowledge that their access to the Website may be monitored and tracked by VITAL by the use of cookies and/or customers IDs. Any information provided by customers through their browsers (including cookies) will be for the use of VITAL, the operator of the Website. VITAL will not disclose personal information about customers or their browsing habits to any other third party, unless customers give VITAL express permission to do so, unless required to do so by law or permitted under VITAL's privacy policy. VITAL may disclose aggregated and/or unidentified information about customers in general, including details of their purchases and statistics related to the Website to others, but in doing so, will not disclose personal information about any particular customer. Notwithstanding the above, customers acknowledge that transmissions to and from the Website may be monitored, intercepted or modified by other parties.

## 17.3 No unlawful or prohibited use

As a condition of use of the Website, Customers warrant that they will not use the Website for any purpose that is unlawful or prohibited by these Terms. Customers may not use the Website in any manner which could damage, disable, overburden, or impair the Website or interfere with any other party's use and enjoyment of the Website. Customers may not obtain or attempt to obtain any materials or information through any means not intentionally made available or provided for through the Website.

## 17.4 Copyright and trade marks

The Website, and the information, images and text on the Website, are copyright. Customers may download the information, images and text as incidentally necessary to enable the proper access to the Website. Other than use as authorised in these Terms or by VITAL in writing, customers may not retain, copy, reproduce, modify or distribute any information, images or text on the Website for any purpose. Trade marks used on the Website to describe companies and their products are trade marks of those companies or the registered proprietor of the relevant trade mark and may not be copied, downloaded, reproduced, modified, or distributed in any way (except as an integral part of an authorised copy of material appearing at this site) without prior permission. VITAL trade marks are used on the Website as trade marks only in Australia, New Zealand and in other countries in which VITAL has rights in the registered or unregistered trade marks.

## 17.5 Linking and framing

Links to external sites from this Website are provided for convenience only and VITAL does not endorse or make any warranty with respect to such external sites.

## 17.6 Website availability

VITAL does not warrant that the Website will be available at any time. Customers acknowledge that the Website may be unavailable for a number of reasons, including due to matters beyond VITAL's control, and shall hold VITAL harmless in respect of any claims arising there from. VITAL does not warrant that customers' access to the Website will meet any particular performance criteria unless otherwise separately agreed in writing.

## 17.7 No liability

To the maximum extent permissible by law, and subject to the provisions of the Australian Consumer Law, VITAL will not be liable in respect of any loss or damage, however caused, to any person or property arising from access to, or use of, the Website or the information on the Website.

## 17.8 Website Errors

The information, software, products, and services included in or available through the Website may include inaccuracies or typographical errors. VITAL reserve the right to correct errors on the Website. VITAL can refuse to honour, not accept and cancel your order due to errors in pricing, product availability, product images, product descriptions, and general errors.

## 18 MISCELLANEOUS

18.1 Nothing contained in these terms and conditions shall exclude or modify the application of any condition, warranty or liability which is imposed by the provisions of any relevant legislation, including the Australian Consumer Law, to the extent to which any such conditions, warranties or liabilities cannot lawfully be excluded.

18.2 The customer will no later than 14 days prior to any proposed change of ownership, change in its particulars, and any alteration or addition to shareholders or directors, notify VITAL in writing of the proposed change.

18.3 The proper law relating to the supply of the Goods is the law of the State of New South Wales and VITAL and the customer agree to submit to the jurisdiction of the Courts of that State.

18.4 Unless VITAL agrees in writing, no waiver, variation or addition to these terms shall have any effect whatsoever. VITAL may vary these Terms from time to time. Any such variation will be effective from the date specified by VITAL in any written notice provided to the customer. By requesting, or continuing to request, any Goods or using the Website, after such effective date, the customer accepts and agrees to be bound by such variation.

18.5 These Terms constitute the entire agreement between the parties for the supply of the Goods and supersede and exclude any representation, agreement, arrangement or correspondence on the matter, any terms or documents submitted by the customer and any terms implied by trade, custom, practice or course of dealing.

18.6 VITAL may assign any of its rights and obligations to any person. The customer may not assign any of its rights and obligations to any person without the prior written consent of VITAL (such consent will not be unreasonably withheld).

18.7 The United Nations Convention on Contracts for the International Sale of Goods (the Vienna Convention) shall not apply to the sale and purchase of the Goods.

18.8 This clause applies if the customer is a trustee and whether or not VITAL has notice of the trust.

(a) Where the customer comprises two or more persons and any of those persons is a trustee this clause applies to such trustee.

(b) The customer agrees that even though it enters into these terms as trustee of the trust, the customer also shall be liable personally for the performance and observance of every covenant to be observed and performed by the customer expressed or implied in these terms.

- (c) The customer warrants it has complete, valid and unfettered power to enter into these terms pursuant to the provisions of the trust and warrants that its entry into these terms is in the due administration of the trust.
- (d) The customer covenants it has a right of indemnity against the property of the trust and it has not, and in the future will not be, excluded, modified, released, lost or diminished (whether by agreement, breach of trust or otherwise).
- (e) The customer shall not, without VITAL's prior written consent (such consent will not be unreasonably withheld):
  - (i) resign or be removed as trustee of the trust or appoint or allow the appointment of a new or additional trustee of the trust;
  - (ii) amend or revoke any of the terms of the trust;
  - (iii) vest or distribute the property of the trust or advance or distribute any capital of the trust to a beneficiary or resettle any of the property of the trust;
  - (iv) permit a beneficiary to have the use, occupation, employment or possession of the property of the trust;
  - (v) do or permit or omit to do an act or thing in breach of the trust or which would permit the trustee to be removed as trustee of the trust;
  - (vi) exercise or permit or allow to be exercised a power to change the vesting date of the trust or provide for an early determination of the trust;
  - (vii) lend any money, give any guarantee or incur any debt other than in the ordinary course of business of the trust; or
  - (viii) pay any of the income of the trust to any beneficiary of the trust if such payment will prejudice or affect the customer's ability to pay all monies due to VITAL.