

# JOHNSON & JOHNSON (NEW ZEALAND) LIMITED – MEDICAL DIVISION

## STANDARD TERMS AND CONDITIONS OF SALE

### 1 ENTIRE AGREEMENT

- 1.1 Subject to any variation under clause 26.4:
- (a) the Contract will be on these Standard Terms to the exclusion of all other terms and conditions (including, without limitation, any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document); and
  - (b) no terms or conditions endorsed upon, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document will form part of the Contract.
- 1.2 JJNZ may revise these Standard Terms at any time by giving notice to the Customer and the revised standard terms will be immediately effective for all Orders made after notice has been given to the Customer.

### 2 ORDERS

- 2.1 Each order for Goods made by the Customer to JJNZ shall be deemed to be an offer by the Customer to purchase Goods subject to these Standard Terms until it is accepted by JJNZ.
- 2.2 JJNZ may cancel the acceptance of any Order for Goods at any time before delivery. The Customer may only cancel an Order for Goods with JJNZ's prior written consent.
- 2.3 By making an Order, the Customer acknowledges that it has read, understood, and agreed to be bound by the terms and conditions set forth in these Standard Terms.
- 2.4 When an Order is recorded in JJNZ's order processing system and JJNZ has generated an order number or track number on its system, a contract will be formed between the parties. A separate Contract is formed in relation to each Order.
- 2.5 The Customer can obtain the relevant order number or track number associated with an Order by requesting it from JJNZ customer services.
- 2.6 To ensure safe handling and minimise breakages in transit some items are only supplied in "minimum order" packaging. Orders for less than the "minimum order" quantity will be rounded to the nearest "minimum order" quantity, and the Customer will be required to pay for all goods supplied, with such amount being the "Goods" under the Contract.
- 2.7 JJNZ may withhold delivery of Goods (whether or not an Order has been accepted) for non-payment of any amounts due and payable or a breach of these Standard Terms by the Customer.

### 3 CANCELLATION

If JJNZ advises the Customer that it will be unable to deliver the Goods and, upon receipt of such notice by the Customer, the Contract will be terminated without incurring any liability.

### 4 PRICES

- 4.1 Unless otherwise agreed in writing, Goods will be invoiced in accordance with JJNZ's prevailing price lists on JJNZ's ordering processing system applicable at the time that JJNZ generates the relevant order number or track number on its system.
- 4.2 Prices are subject to change without notice.
- 4.3 GST:
- (a) All prices quoted or listed are exclusive of GST unless expressly indicated to the contrary.
  - (b) Where a payment or consideration for the Goods is not expressed to include GST, the Customer must pay, in addition to the payment or consideration expressed and without deduction or set off, an amount in respect of GST applicable to the supply by JJNZ to the Customer.
  - (c) Payment of GST must be made at the same time as payment is due on the invoice for the Goods.
  - (d) JJNZ must issue the Customer with a correctly rendered tax invoice for any amount collected on account of GST.

### 5 PAYMENT

- 5.1 Goods will be invoiced on dispatch or at any later time determined by JJNZ.
- 5.2 Payment is to be made to JJNZ by the Customer on the 20th day of the month following the invoice.
- 5.3 Payment must be made to JJNZ without set-off or deduction of any kind.
- 5.4 All payments payable to JJNZ under the Contract shall become due immediately upon termination of the Contract despite any other provision.
- 5.5 If the Customer fails to pay an amount on the due date, all amounts then owing to JJNZ immediately and automatically will become due and payable. The Customer will pay JJNZ interest on all overdue amounts calculated daily from the due date for payment at the rate which is 4% above the Reserve Bank of New Zealand's Official Cash Rate.

### 6 DELIVERY TERMS AND CHARGES

- 6.1 Delivery occurs when possession or control of the Goods passes to the Customer, its agent or carrier, at the Customer's premises or any other location agreed between the Customer and JJNZ.
- 6.2 A receipt for the Goods signed on behalf of the Customer will be conclusive evidence of delivery.
- 6.3 Any dates specified by JJNZ for delivery of the Goods are intended to be an estimate only. Time for delivery shall not be made of the essence.
- 6.4 JJNZ may make partial deliveries or deliveries by instalments in any amount it may determine and each such partial delivery or delivery by instalments shall be deemed to be a separate Contract and these

Standard Terms shall apply to each partial delivery or delivery by instalments as if such partial amount comprised the "Goods" under the Contract.

- 6.5 The Customer must notify JJNZ within 7 days of delivery of any short fall in or loss or damage to Goods delivered or it will be deemed to have accepted the Goods and cannot return the Goods in accordance with clause 10.
- 6.6 Other than Orders made for OCD Goods, all Orders in excess of \$250 will be free into store throughout New Zealand. Orders of \$250 or less may incur a \$25 handling and administration fee. Orders for OCD Goods will incur a handling and administration fee, the amount of which will be notified to the Customer by JJNZ from time to time.
- 6.7 Where an Order has more than one scheduled delivery, each separate delivery may incur a handling and administration fee.
- 6.8 If the Customer requests express freight of Goods or any non-standard form of delivery, the Customer will be responsible for the freight/delivery costs and such costs will be added to the invoiced costs and be payable at the same time.

## **7 RISK/TITLE**

- 7.1 Other than in relation to OCD Goods, risk of damage to or loss of the Goods shall pass to the Customer at the time when the Goods are delivered to the Customer.
- 7.2 Risk of damage to or loss of the OCD Goods shall pass to the Customer at the time when the OCD Goods are loaded for delivery at JJNZ's premises.
- 7.3 Title in the Goods passes to the Customer when JJNZ has received (in cash or cleared funds) the price for the Goods in full together with any additional charges as set out in the relevant invoice and any interest due.

## **8 RECOVERY OF GOODS**

- 8.1 Until title of the Goods has passed to the Customer, the Customer must:
  - (a) hold the Goods on behalf of JJNZ;
  - (b) store the Goods (at no cost to JJNZ) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as JJNZ's property;
  - (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
  - (d) maintain the Goods in satisfactory condition insured on JJNZ's behalf for their full price against all risks to the reasonable satisfaction of JJNZ. On request the Customer shall produce the policy of insurance to JJNZ.
- 8.2 Where payment is overdue in whole or in part for any of the Goods, JJNZ or its nominee may (without prejudice to any of its other rights) recover and / or resell the Goods and may enter the Customer's premises or any other place where the Goods are

stored by the Customer for that purpose without being liable for any loss or damage caused.

- 8.3 The Customer grants to JJNZ an irrevocable license and authority to enter the Customer's premises to recover the Goods, provided that JJNZ may only recover and resell for its own account sufficient of the Goods to satisfy all the Customer's unpaid liabilities in respect of the Goods and cost of resale.
- 8.4 The Customer may resell the Goods before title has passed to it solely on the following conditions:
  - (a) any sale shall be effected in the ordinary course of the Customer's business at arm's length; and
  - (b) any such sale shall be a sale of JJNZ's property on the Customer's own behalf and the Customer shall hold the proceeds on account for JJNZ.

## **9 PPSA**

- 9.1 The Customer grants to JJNZ a security interest in all present and after acquired Goods supplied by JJNZ to the Customer and all proceeds of the Goods for the purposes of the PPSA and as security for the payment of the Goods and any amount owing by the Customer to JJNZ from time to time.
- 9.2 On the request of JJNZ, the Customer shall promptly execute any documents and do anything else required by JJNZ to give effect to these Standard Terms and to ensure that the security interest created under these Standard Terms constitutes and remains a first ranking perfected security interest over the Goods.
- 9.3 The Customer:
  - (a) shall notify JJNZ in writing of a change of its name at least 14 days prior to the date on which the change of name becomes effective;
  - (b) shall provide any information JJNZ reasonably requires to complete a financing statement or a financing change statement; and
  - (c) waives any right to receive a copy of a verification statement under the PPSA.
- 9.4 The Customer agrees that nothing in sections 114(1)(a), 117(1)(c), 133 and 134 of the PPSA shall apply to these Terms.
- 9.5 The Customer agrees that its rights as debtor in sections 116, 120(2), 121, 127, 129 and 131 of the PPSA shall not apply to these Terms.

## **10 RETURNS**

- 10.1 JJNZ will accept return of the Goods if the Customer complies with JJNZ's returns policy applicable to the Goods (as amended from time to time) and available at <http://www.orthoclinical.com/en-au/Services/CustomerService/Pages/FAQ's.aspx> in relation to OCD Goods and at [www.jnjmedicaldevices.com/en-NZ/](http://www.jnjmedicaldevices.com/en-NZ/)
- 10.2 The Customer is responsible for all costs of delivery applicable to the return of the Goods to JJNZ, unless JJNZ agrees that the Goods are defective.

- 10.3 In the event the Customer returns non-defective Goods, JJNZ reserves the right to charge a restocking fee on Goods returned, at a rate of 15% of invoiced cost.

## **11 STORAGE, HANDLING AND USE OF GOODS**

- 11.1 It is the Customer's responsibility:
- (a) to ensure that all applicable health and safety regulations and therapeutic goods requirements are observed and other appropriate steps taken in relation to the storage, handling, sale and the use of the Goods once they are delivered to the Customer; and
  - (b) where information is supplied to the Customer on potential hazards relating to the Goods, to bring such information to the attention of its Personnel, sub-contractors, visitors and customers.
- 11.2 Without prejudice to the foregoing, it is also the Customer's responsibility to provide safe facilities for the reception of Goods into storage.
- 11.3 Where Goods are consigned or loaned pursuant to clauses 15 or 16, the Customer grants to JJM an irrevocable license and authority (following reasonable notice) to enter the Customer's premises to access the consignment or loaned inventory to inspect, count or scan the Goods in accordance with JJNZ internal procedures and policy

## **12 COUNTERFEIT GOODS**

- 12.1 The Customer acknowledges there are safety and regulatory concerns in relation to medical products that are counterfeit or not approved or packaged for sale in the country of the Customer. To safeguard the welfare of patients and the reputation of JJNZ, its Affiliates and JJNZ's and its Affiliates' products, the Customer warrants it will only purchase JJNZ's medical devices from JJNZ or its authorised distributors while the Customer has an active account with JJNZ.
- 12.2 The Customer shall not alter, remove or in any way tamper with any of the trade or other marks or numbers of JJNZ attached to or placed upon the Goods.
- 12.3 JJNZ may refuse to continue to supply its products to the Customer if JJNZ considers on reasonable grounds that the Customer has breached this clause 12. Any such refusal will be without prejudice to JJNZ's rights to claim damages and indemnities from the Customer.

## **13 USE AND RESALE OF GOODS**

- 13.1 Goods purchased in New Zealand may only be used or resold in New Zealand. The Customer agrees that it is buying the Goods for its own internal use only and not for resale to any third party.
- 13.2 Where the Customer supplies Goods to any other person in the course of trading, the Customer must not give or make any undertaking, assertion or representation in relation to the Goods without JJNZ's prior written approval. In any event, the

Customer must not make any representations or advertise the Goods in any way contrary to any laws including any health and safety regulations and therapeutic goods requirements and must not make any representations or advertise the Goods in a way which promotes or suggests the unauthorised use of medical devices.

## **14 PRODUCT RECALLS**

In the event that any of the Goods are subject to a recall, field safety alert or hazard alert by either (i) JJNZ or (ii) any governmental agency or regulatory authority, the Customer will take all reasonable steps to assist with (including identification of any party to whom the Goods have been supplied by the Customer), and will comply with any reasonable directions given by JJNZ, in respect of such matter.

## **15 CONSIGNMENT OF GOODS**

- 15.1 Subject to JJNZ's prior written confirmation and agreement (including the Maximum Quantity of Goods), JJNZ agrees to consign to the Customer the Goods specified by the Customer in an Order for consignment of Goods provided that the number of Goods required by the Customer in the Order will not result in the Customer having possession of more than the Maximum Quantity of Goods.
- 15.2 For the avoidance of doubt, risk and title in the Goods supplied to the Customer on a consignment basis passes to the Customer in accordance with clause 7.
- 15.3 The Customer must, in respect of Goods consigned to the Customer by JJNZ:
- (a) hold the Goods on behalf of JJNZ;
  - (b) store the Goods (at no cost to JJNZ) on the Customer's premises separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as JJNZ's property;
  - (c) store each Good to use according to the Good's labelling and other manufacturer conditions supplied with the Good;
  - (d) consume the Goods on a first-expiring, first-out basis for Goods that have an expiration date;
  - (e) maintain the Goods in satisfactory condition;
  - (f) as soon as practical after Goods have been used, consumed, lost or damaged place a purchase order with JJNZ for such Goods including the relevant code and quantity; and
  - (g) indemnify JJNZ for any loss or damage of the Goods while they are in possession of the Customer.
- 15.4 The Customer may resell the Goods before title has passed to it solely on the following conditions:
- (a) any sale shall be effected in the ordinary course of the Customer's business at arm's length; and

- (b) any such sale shall be a sale of JJNZ's property on the Customer's own behalf and the Customer shall hold the proceeds on account for JJNZ.

## 16 LOANED EQUIPMENT

- 16.1 Subject to JJNZ's prior written confirmation and agreement (including the Maximum Quantity of Goods), JJNZ will loan to the Customer the Goods specified by the Customer in an Order for the loan of Goods provided that:
- (a) the number of Goods required by the Customer in the Order will not result in the Customer having possession of more than the Maximum Quantity of Goods;
  - (b) title in the Goods remains vested with JJNZ; and
  - (c) risk in the Goods passes to the Customer in accordance with clause 7.
- 16.2 The Customer must, in respect of the Goods loaned to the Customer by JJNZ:
- (a) store the Goods (at no cost to JJNZ) on the Customer's premises;
  - (b) store each Good to use according to the Good's labelling and other manufacturer conditions supplied with the Good;
  - (c) maintain the Goods in satisfactory condition;
  - (d) as soon as practical after Goods have been used, consumed, lost or damaged place a purchase order with JJNZ for such Goods including the relevant code and quantity; and
  - (e) indemnify JJNZ for any loss or damage of the Goods while they are in possession of the loaned Goods.

## 17 SINGLE USE PRODUCTS

The Customer acknowledges that a Single-Use Product may be used once only and no right or license is conveyed with respect to such Single-Use Products beyond the right to use the products once and only once.

## 18 CEASING SUPPLY

- 18.1 JJNZ may cease to supply Goods on a consignment or loan basis to the Customer on 14 days' written notice.
- 18.2 Upon cease of supply of the Goods or termination of any continuing consignment or loan arrangements with JJNZ, the Customer must:
- (a) in respect of Goods supplied to the Customer under consignment arrangements with JJNZ, reconcile all stock units by using either or both of the following options:
    - (i) return consignment items: unopened and undamaged packages with original ship units may be returned for reduction against the consignment stock level; and/or

- (ii) purchase consignment items: Orders must be issued for all unreturned Goods, including any lost, damaged, stolen or missing Goods for which an Order has not already been issued by the Customer; and

- (b) in respect of Goods supplied to the Customer under loan arrangements with JJNZ, at JJNZ's election:

- (i) return the Goods to JJNZ at the Customer's cost; or
- (ii) permit JJNZ to collect the Goods in the Customer's possession or control.

- 18.3 The Customer must use all reasonable endeavours to assist JJNZ to exercise its right under 18.2(b)(ii).

## 19 INDEMNITY

The Customer indemnifies JJNZ, its Affiliates, and its and their Personnel against any and all cost, expense, damage, judgment, liability or loss (including consequential loss, loss of profit and loss of expected profit) incurred directly or indirectly as a result of or in connection with any claim, demand or cause of action asserted or brought by a third party in relation to or arising from any negligent act or omission, unlawful conduct or other misconduct by the Customer or its Personnel relating to the Contract or the Goods.

## 20 WARRANTIES

- 20.1 Other than as specifically set out in these Standard Terms, all warranties implied by statute or law are excluded to the full extent permitted by law.
- 20.2 JJNZ warrants that if any of the Goods are medical devices for the purposes of the *Medicines Act 1981*, that such goods are sold and supplied in accordance with the provisions of the *Medicines Act 1981*.

## 21 LIMITATION OF LIABILITY

- 21.1 To the extent permitted by law, the liability of JJNZ for a breach of a warranty or condition under this agreement or implied by statute or law about the Goods sold, is at the option of JJNZ, limited to:
- (a) the replacement of the Goods;
  - (b) the supply of equivalent Goods;
  - (c) repair of the Goods;
  - (d) payment of the cost of replacing the Goods;
  - (e) payment of the cost of acquiring equivalent Goods; or
  - (f) payment of the cost of having the Goods repaired.
- 21.2 Under no circumstances will JJNZ be liable for any consequential or indirect loss, direct or indirect loss of profits, loss of business or any special or exemplary damages suffered or incurred in connection with the Contract or the Goods or any party's actions or omissions under the Contract.
- 21.3 The Customer acknowledges and agrees that the Goods are acquired for the purposes of a business

and that the guarantees provided under the Consumer Guarantees Act 1993 shall not apply.

## **22 INTELLECTUAL PROPERTY**

22.1 The Customer is not permitted to use any of JJNZ's or its Affiliates' intellectual property for any purpose without JJNZ's or any of its Affiliates' prior written consent.

22.2 No right, title, interest or license in any of JJNZ's or its Affiliates' intellectual property is granted to the Customer under the Contract.

## **23 FORCE MAJEURE**

The parties shall be excused for delays in performance or failure of performance (except payment of amounts due) to the extent arising from causes beyond such party's reasonable control, including without limitation, strikes, wars, fires, acts of terror or acts of God, such as floods and earthquakes. In the event of any such event or condition, the party whose performance is excused shall notify the other party as soon as practicable and shall make diligent efforts to perform its obligations at its earliest opportunity.

## **24 CONFIDENTIALITY**

The Customer shall keep in confidence and shall not, without securing JJNZ's prior written consent, originate any publicity (including any news release or public announcement) or disclose to any third party any Confidential Information, except:

- (a) to its employees or representatives requiring the information for the purposes of the Order, provided they are made aware of these restrictions; or
- (b) if the Customer is required to do so by law or by a stock exchange (except this does not permit the Customer to disclose any information of the kind referred to in section 177(1) of the PPSA unless section 177(2) of the PPSA applies); or
- (c) if the Customer is required to do so in connection with legal proceedings relating to the Goods or the Contract.

## **25 DISPUTE RESOLUTION**

25.1 Nothing in this clause prevents a party seeking urgent injunctive or similar interim relief from a court.

25.2 If a dispute arises between the parties in connection with the Contract, the parties undertake in good faith to use all reasonable endeavours to settle the dispute by way of good faith negotiation (including escalating the dispute to executive level).

## **26 GENERAL**

26.1 **(notices)** Notices, consents and other communications in connection with the Contract must be in "writing" and hand-delivered or sent by pre-paid post to the other party's representative identified in the Contract. Notices take effect as follows:

- (a) hand-delivery – at the time the delivery is made; and
- (b) notices sent by pre-paid post – one Business Day after posting.

26.2 **(assignment)** The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of JJNZ.

26.3 **(no exclusivity)** The relationship between the parties is not one of exclusivity.

26.4 **(waiver/amendment)** Subject to clause 1.2, the terms of these Standard Terms may only be amended by agreement of the parties in writing which specifically refers to this clause 26.4. Any variation to these Standard Terms or representations about the Goods which do not satisfy this clause 26.4 shall have no effect. A waiver of rights under this agreement shall only be effective if given in writing to the other party and specifically refers to this clause 26.4.

26.5 **(exercise of rights)** JJNZ may exercise a right, remedy or power in any way JJNZ considers appropriate. If JJNZ does not exercise a right, remedy or power at any time, this does not mean that JJNZ cannot exercise it later.

26.6 **(survival)** Any term of these Standard Terms and the Contract survives the expiry, cancellation or termination of the Contract if required to give effect to it.

26.7 **(severability)** If the whole or any part of a provision of these Standard Terms is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of these Standard Terms has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of these Standard Terms or is contrary to public policy.

26.8 **(no partnership)** Nothing contained or implied in these Standard Terms or the Contract will create a joint venture, partnership or principal and agency relationship between the parties and neither party will represent that it is the joint venturer, the partner, principal or the agent of the other party and neither party will have power to bind or obligate the other party in any manner whatsoever.

26.9 **(construction)** No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, these Standard Terms or any part of it.

27 **(governing law)** The laws of the New Zealand will govern the Contract and the parties submit to the exclusive jurisdiction of the courts of New Zealand.

## **28 INTERPRETATION**

28.1 In these conditions the following words have the following meanings:

"**Affiliate**" has the meaning given to the term "related company" in the Companies Act 1993.

"**Confidential Information**" means all confidential, non-public or proprietary information, regardless of how the information is stored or delivered, exchanged between the parties relating to JJNZ's business, technology or other affairs and includes the Contract and any pricing arrangements or discounts discussed or agreed by the parties.

“**Confirmation Letter**” means the written confirmation from JJM to Customer that it offers consignment or loaned Goods on the terms set out in these Standard Terms.

“**Contract**” means the contract for the supply of Goods between JJNZ and the Customer on these Standard Terms formed in accordance with clause 2.4.

“**Customer**” means the person(s), firm or company who purchases the Goods from JJNZ.

“**Goods**” means any goods agreed in the Contract to be supplied to the Customer by JJNZ.

“**JJNZ**” means Johnson & Johnson (New Zealand) Limited (Company Number 45150).

“**Maximum Quantity of Products**” means the maximum quantity of Goods which JJM will consign or loan to Customer (as set out in the Confirmation Letter).

“**OCD Goods**” means those Goods supplied by JJNZ trading as “Ortho Clinical Diagnostics”.

“**Order**” means an order by the Customer:

- (a) to purchase Goods from JJNZ; or
- (b) for Goods to be supplied by JJNZ under consignment or a loan in accordance with clauses 15 or 16 respectively,

as applicable, however made.

“**Personnel**” of a party includes an employee, servant, agent, officer or director of that party.

“**PPSA**” means the Personal Property Securities Act 1999.

“**Single-Use Product**” means any product sold by JJNZ that is labelled "For Single Use" or "Single Use Only" or "Not For Re-Use" or with language similarly indicating that the product is intended to be used once only.

“**Standard Terms**” means the terms and conditions set out in this document.

- 28.2 (**include**) The verb “include” (in all its parts, tense and variance) is not used as, nor is it intended to be interpreted as, a word of limitation, and the words “including”, “for example” or “such as” do not limit what else is included.
- 28.3 (**person**) The word “person” includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any government agency.
- 28.4 (**successors**) A reference to a person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
- 28.5 (**singular includes plural**) The singular includes the plural and vice versa.
- 28.6 (**headings**) all headings in these Standard Terms are for reference purposes only and do not define, limit or in any way affect the meaning or interpretation of these Standard Terms.
- 28.7 (**legislation**) a reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it.
- 28.8 (**time**) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.

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