

## EBOS HEALTHCARE – TERMS OF TRADE

### 1 Terms of Contract

- 1.1 Any Goods supplied by us to you shall be subject to these Terms unless we agree in writing to change them. By placing an order for Goods from us, that action by you will be deemed to be acceptance of these Terms, notwithstanding anything that may be stated to the contrary in your enquiries or your order.
- 1.2 We may decline part or all of any order received from you for any reason (including where Goods are out of stock or otherwise unavailable) by notifying you prior to issuing an invoice for the relevant Goods.
- 1.3 If we decline any order under clause 1.2 and some or all of the Goods are out of stock, you may request that we place those out of stock Goods on backorder ('Backorder'). If we accept your request, the following provisions will apply:
  - (a) notwithstanding clause 2.4, payment for the Goods is due in full, without deduction, withholding or set-off of any kind, immediately on acceptance of the Backorder by us;
  - (b) We 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 we are not able to procure the Goods specified in the Backorder within the period as specified in clause 1.3(b), either party may cancel the Backorder by notifying the other party, and we will refund any payments made by you under clause 1.3(a).
- 1.4 Subject to clause 1.3(c), you cannot cancel any order for Goods after it has been accepted by us and you are bound to pay the price for those Goods, unless we expressly agree otherwise in writing.

### 2 Price

- 2.1 Unless otherwise agreed in writing all freight, insurance, delivery and travel charges will be additional to any price quoted. Unless otherwise agreed in writing any quoted price may be altered prior to delivery of Goods to you, if our costs fluctuate materially. We may withdraw any quotation before it is accepted, and in any event any quotation will lapse 30 days after it is given without notice. GST will be payable by you as an additional amount on all prices and charges.
- 2.2 The price for Goods will be either as quoted to you in writing or, if no written quote is provided, pursuant to our standard charges applying at the time.
- 2.3 Payment: We may, at our discretion, offer you Credit Card only payment method for the Goods.
- 2.4 Where you have been offered a Credit Account, and unless otherwise agreed in writing you must pay for Goods by the 20th day of the month following the date of the invoice relating to those Goods.
- 2.5 If full payment for the Goods is not made on the due date, then without prejudice to any other remedies available to us:
  - (a) We may cancel or withhold supply of further Goods;

- (b) Interest on monies overdue shall be charged on a daily basis and be calculated by adding 3% per annum to the overdraft rate payable by us to our bankers at the time of and during such default, and interest shall continue to accrue both before and after judgment; and,
- (c) You shall be responsible for all costs incurred by us in recovering such monies.

- 2.6 We may from time to time vary your credit limit with us at our discretion, in relation to further purchases of Goods. If any acquisition would be in excess of your credit limit, we reserve the right to require payment in cash prior to delivery of the Goods, of the amount by which the cost exceeds your credit limit.
- 2.7 We shall have a full right of set-off with respect to amounts owed by you to us under these Terms, in relation to any monies owing by us, or any of our related companies, to you howsoever arising. Your obligation under these Terms shall be to pay the full amount owing under these Terms free of all deductions or rights of set off.

### 3 Ownership

- 3.1 Ownership in the Goods shall not pass upon delivery, but shall remain with us until full payment for all monies owing by you to us have been made. Until all monies have been paid:
  - (a) You hold the Goods supplied as fiduciary for us and will deal with them as agent for and on behalf of us (but will not hold yourself out as our agent to any third parties);
  - (b) You shall store our Goods separately consistent with the Goods being our property, and ensure such Goods are able to be separately identified;
  - (c) If you resell the Goods supplied the proceeds of any resale will belong to us, and you will pay the same into a separate account for which separate records are kept, and all claims which you hold against third parties will be handed over to us;
  - (d) You irrevocably give us and our agents the right to enter your premises, to remove any of the Goods supplied and resell them; and,
  - (e) You agree to indemnify us (and our agents) against any liability incurred in connection with such entry and removal.

### 4 Risk and Delivery

- 4.1 Unless otherwise agreed, you shall be responsible for the cost of and arranging transportation of all Goods. If we are delivering the Goods to you, we will use our best endeavours to see that deliveries are made according to schedule, but shall not be responsible for delivery delays due to causes beyond our control.
- 4.2 Risk in respect of the Goods sold shall pass to you when the Goods are delivered to you or your carrier, or the time you pay for the Goods, whichever is the earlier. It is your responsibility to insure the Goods, even if we have arranged transportation of the Goods.

## 5 Warranties

- 5.1 Except to the extent of written warranties given by us to you, all warranties and representations in respect of Goods supplied are excluded, including (to the extent permitted by law) those expressed or implied by law. Where any written warranty conflicts with clauses 5.2 or 5.3 the provisions of clauses 5.2 and 5.3 as applicable shall apply.
- 5.2 We shall not be liable:
- Where you have altered or modified the Goods, misapplied the Goods, or have subjected them to any unusual or non-recommended use, servicing or handling;
  - For loss caused by any factors beyond our control;
  - For any indirect or consequential loss of any kind;
  - For any second hand Goods; and
  - Where the terms of any written warranty have not been complied with, or any manufacturers' handbook provided to you has not been complied with.
- 5.3 Our total liability under any warranty for defective or damaged Goods supplied by us is limited at our option to either:
- Replacing or repairing the defective or damaged Goods; or
  - Refunding the price of the defective or damaged Goods.
- 5.4 Goods identified to us as damaged or defective, may be inspected by us at our discretion.
- 5.5 Any return of Goods and/or request for credit on Goods returned shall be subject to the following conditions:
- A prior Returned Goods Authorisation number is obtained from us in writing within 72 hours of receiving the products;
  - The Goods are returned by our recognised carrier;
  - The RGA number must be attached to the outside of the Goods;
  - The Goods must be undamaged, unopened and in resalable condition (this includes all manuals, brochures and other material);
  - The original invoice and reason for return must be enclosed with the Goods;
  - The risk of any loss, damage or deterioration of Goods returned to us will remain with you until the Goods have been received and inspected at our premises;
  - If required to do so by us, you must be able to show proof of delivery of returned Goods. Failure to comply will result in a repudiation of any claims made by you against us for the returned Goods in question;
  - If we allow Goods to be returned by you, the level of credit given to you is at our discretion;
  - No Goods will be accepted for return after 21 days from delivery, or where no longer required because you change your mind;
  - Indent orders and vaccines are non-returnable for credit; and,

- All claims against us for shortages and breakages must be made in writing within seven days of receipt of Goods by you.

## 6 Restocking Fee

- Where we accept Goods back for return, as a result of your error, we reserve the right to charge a restocking fee (the greater of 15% of the price for the Goods or \$30.00 exc. GST) per order.
- Goods returned may also be subject to a freight forward fee incurred by us in returning Goods to our warehouse.

## 7 General Terms

- 7.1 Mediation: If a dispute arises, the parties may agree to settle the dispute by mediation before resorting to litigation or arbitration.
- 7.2 Cancellation: You may not cancel any order for Goods or services or part of it without our written consent. If you do so, in addition to any other rights we may have, we may retain any deposit paid.
- 7.3 Waiver or Variation: Waiver or variation of these Terms by us will only be effective if given in writing by an authorised person. If we waive any of these Terms the waiver will not affect our rights under these Terms at any future time.
- 7.4 Governing Law: These Terms will be interpreted in accordance with and governed by the laws of New Zealand and the New Zealand courts will have non-exclusive jurisdiction in respect of all matters between us.
- 7.5 The Privacy Act: You and any guarantor (if relevant) authorise us to collect and hold personal information from any source we consider appropriate to be used for the purposes of determining credit worthiness, for communicating promotional activities and product information by us, for debt collection purposes, or for any other related purpose. You further authorise us to disclose personal information held by us for the purposes set out above to any other parties. You understand that you have a right of access and may request correction of personal information held by us about you. We may contact you with marketing material about us and our related businesses that may interest you. We may disclose your personal information to our related companies and to third parties who provide us with (or help us provide) products and services and to health care information services providers who may use it. We may provide information to our information technology providers in locations outside the customer's state or territory and to locations overseas such as Australia, the USA and Canada.
- 7.6 Consumer Guarantees Act (CGA): If the CGA applies, these Terms shall be read subject to your rights under the CGA, provided that where you are acquiring Goods for business purposes the CGA shall not apply.

## 8 PPSA

- 8.1 Security: You acknowledge and agree that by assenting to these Terms, you grant a security interest (by virtue of the retention of title clause in clause 5 of these Terms) to us in all Goods previously supplied by us to you (if any) and

all after acquired Goods supplied by us to you (or for your account).

#### 8.2 Financing statement: You undertake to:

- (a) Sign any further documents and/or provide any further information (which information you warrant to be complete, accurate and up-to-date in all respects) which we may reasonably require to enable registration of a financing statement or financing change statement on the Personal Property Securities Register;
- (b) Not register a financing change statement or a change demand in respect of the Goods (as those terms are defined in the PPSA) without our prior written consent; and
- (c) Give us not less than 14 days prior written notice of any proposed change in your name and/or any other change in your details (including, but not limited to, changes in your address, facsimile number, trading name or business practice).

#### 8.3 Waiver and Contracting Out

- (a) Unless otherwise agreed to in writing by us you waive your right to receive a verification statement in respect of any financing statement or financing change statement relating to the security interest.
- (b) To the maximum extent permitted by law, you waive your rights and, with our agreement, contract out your rights under the sections referred to in section 107(2)(c) to (i) of the PPSA.
- (c) You agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms and, with our agreement, contract out of such sections.
- (d) You and we agree that section 109(1) of the PPSA is contracted out of in respect of particular Goods if and only for as long as we are not the secured party with priority over all other secured parties in respect of those Goods.

### 9 Force Majeure

- 9.1 We will not be liable, and you will not be entitled to cancel any order, for any delay or failure by us to perform our obligations under these Terms cause by any event or circumstance beyond our reasonable control (including but not limited to 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 or transport or acts of omissions by regulatory authorities).

### 10 Use of EBOS HEALTHCARE Website

#### 10.1 Information on website

The information contained on our website at [www.eboshealthcare.co.nz](http://www.eboshealthcare.co.nz) ('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 you should consult an appropriate professional for specific advice tailored to your situation. You acknowledge that the information available on the Website may be modified, updated or replaced by us from time to time without notice. We do 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 New Zealand. We shall have no liability with respect to any claims arising from the use of the information on the Website however arising.

#### 10.2 Security and Cookies

Customers acknowledge that their access to the Website may be monitored and tracked by the use of cookies and/or customers IDs. Any information provided by you through your browsers (including cookies) will be for our use as the operator of the Website. We will not disclose personal information about you or your browsing habits to any other third party, unless you give us express permission to do so, unless required to do so by law or permitted under our privacy policy. We 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, you acknowledge that transmissions to and from the Website may be monitored, intercepted or modified by other parties.

#### 10.3 No unlawful or prohibited use

As a condition of use of the Website, you warrant that you will not use the Website for any purpose that is unlawful or prohibited by these Terms. You 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. You may not obtain or attempt to obtain any materials or information through any means not intentionally made available or provided for through the Website.

#### 10.4 Copyright and trade marks

The Website, and the information, images and text on the Website, are copyright. You 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 us in writing, you 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. Our trade marks are used on the Website as trade marks only in Australia, New Zealand and in other countries in which we have rights in the registered or unregistered trade marks.

#### 10.5 Linking and framing

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

#### 10.6 Website availability

We do not warrant that the Website will be available at any time. You acknowledge that the Website may be unavailable for a number of reasons, including due to

matters beyond our control, and shall hold us harmless in respect of any claims arising there from. We do not warrant that your access to the Website will meet any particular performance criteria unless otherwise separately agreed in writing.

#### 10.7 No liability

To the maximum extent permissible by law, and subject to the provisions of the Consumer Guarantee Act, we 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.

#### 10.8 Website Errors

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

### 11. Defined Terms

11.1 Backorder means an order in respect of Goods which are out of stock at the time of placing the order in accordance with clause 1.3.

11.2 Goods means all Goods supplied from time to time by us to you, provided that:

- (a) Where the Goods supplied are your Inventory, then all references to Goods in these Terms shall, in respect of those Goods, be read as references to Inventory; and
- (b) Where the Goods supplied are not Inventory then all references to Goods in these Terms shall, in respect of those Goods, mean the Goods described in any one or more of the relevant order form, packing slip or invoice (or its equivalent, whatever called) relating to those Goods, on the basis that each such order form, packing slip or invoice (or its equivalent) shall be deemed to be incorporated in, and form part of, these Terms.

11.3 Inventory has the meaning given to that term in the PPSA.

11.4 PPSA means the Personal Property Securities Act 1999 as amended or substituted from time to time.

11.5 RGA means return goods authorisation as detailed in clause 5.5

11.6 Terms means these terms of trade.

11.7 We/Us/Our means EBOS Group Limited.

11.8 You/Your means a customer that places an order for Goods from us.

11.9 Unless the context otherwise requires, words and phrases shall have the meanings given to them in, or by virtue of, the PPSA.