

KIRKWALL AUSTRALIA PTY LTD
ABN 35 082 177 231
TRADING AS
NEOMEDIX CONSUMABLES

TERMS AND CONDITIONS OF SALE

1. Definitions

1.1 In these Terms and Conditions of Sale the following definitions shall apply:

1.1.1 "the Company" means KIRKWALL AUSTRALIA PTY LTD ABN 35 082 177 231 TRADING AS NEOMEDIX CONSUMABLES.

1.1.2 "the Customer" means the person(s), firm, end-user, clinical institution and or any other legal entity (including but not limited to the customer's successors, representatives and permitted assigns) ordering or buying goods and or services from the Company. Where there is more than one buyer the covenants on their part contained herein shall be deemed to be joint and several covenants.

1.1.3 "Goods" means all goods, products and/or services supplied by the Company to the Customer.

1.1.4 " Notice" shall mean delivery of a notice either by Registered Australia Post to the physical business address of the customer or by email to the usual email address of the customer.

2. Conditions

2.1 These Terms and Conditions shall apply to and be incorporated into every agreement between the Company and the Customer under which the Company supplies goods to or at the request of the Customer. These terms and conditions are deemed to be incorporated into all contracts for the supply of goods by the Company to the Customer.

2.2 These Terms and Conditions shall take precedence over any conditions set out in any other communication or document of the Customer regardless of the date or time of such communication or document and shall not be varied without the express written consent of the Company.

2.3 These Terms and Conditions are to be read in conjunction with the Notice of Disclaimer.

2.4 No contract or agreement in respect of the Goods will arise between the Company and the Customer until the Company has accepted the Customer's Purchase Order.

3. Price

3.1 Unless otherwise specifically stated, any prices quoted by the Company are in Australian currency, inclusive of packaging but exclusive of General Sales Tax (GST), Freight and Delivery charges. The Company shall charge the Customer for the actual cost incurred in respect of such items.

- 3.2 Where the cost price of the goods (including international freight charges) originate in a foreign currency and the company quotes prices to the customer in the Australian currency equivalent, the company reserves the right to process either a debit or credit adjustment note on/to the customer for additional or reduced cost prices being charged as a result of foreign exchange rate variations.
- 3.3 Prices quoted are current on the day of quotation and are valid for 21 days there after. If delivery occurs outside the 21 day validity period of the quotation, and such delivery is due to the goods being on supplier backorder, the Company reserves the right to alter the price payable by the Customer according to the price prevailing on the day of the despatch of the goods to the customer.

4. **Payment**

- 4.1 Subject to the company's acceptance of a Credit Application form being duly completed by the customer and that the customer's trade references are validated, terms given by the company are strictly 25 calendar days from the date of invoice.
- 4.2 In the event that payment shall have not have been received by the company on such date the company shall be entitled to recover the original invoiced amount plus interest. Interest shall be charged on the total amount outstanding calculated at 5% per annum above the current ANZ Bank overdraft rate, calculated on a daily basis.
- 4.3 The Customer will pay all collection costs including but not limited to legal expenses and debt collection commissions incurred in obtaining payment for any amounts owing to the Company in respect of the Goods.
- 4.4 The granting of any credit by the Company to the Customer shall be at the Company's absolute sole discretion and may be revoked at any time. Upon such revocation a notice shall be delivered to the customer. Upon receipt of such a notice by the customer any and all amounts owing to the Company shall be immediately repaid to the Company by the customer.
- 4.5 In consideration of the Company agreeing to and continuing to supply Goods to the Customer, the Directors (of the customer's legal entity) jointly and severally guarantee to the Company the payment of the amount due by the Customer for the Goods and any other monies or damages payable to the Company by the Customer pursuant to these Conditions including but not limited to the items listed under Clause 1.1.3.
- 4.6 This guarantee shall be a continuing Guarantee and shall not be affected or avoided in any way by any agreement or arrangement made between the Customer and the Company at any time or other indulgence given by the Company to the Customer or arrangement with or release of the Customer or any one or more of the said Directors, or in the event that the Customer becomes bankrupt or insolvent. Any and all Directors who sign the credit application shall be bound even if any or all of the other Directors fail to do so or there are no other Directors.
- 4.7 Any payment received by the company, which is subsequently found to be a preferential payment, shall not be a payment for the purposes of this Guarantee.

5. Retention and Passing of Title

- 5.1 The risk of ownership of the Goods shall pass to the Customer on delivery. Until the Company has received payment in full, the Goods shall remain in the ownership and property of the Company and the Company has the right, without prejudice to the obligations of the Customer to pay the price, to recover the goods and for the purpose thereof the Company, or the Company's nominated agent, may enter upon any premises of or occupied by the Customer or third party without the consent of the third party.

6. Losses and Damage in Transit or Non-delivery

- 6.1 All risks in respect of the Goods during transit shall be assumed by the Courier or Freight Service(s) employed by the Company or the Customer. The Company shall not be held liable for any consequences of late delivery howsoever caused.

7. Frustration (Force Majeure)

- 7.1 If the Company is prevented at any time from performing any contractual obligation or if any loss, damage, injury or delay in delivery is occasioned by or due to any cause beyond the Company's control including but without prejudice to the generality of the foregoing, the commission of any criminal act, shortage of Goods, act of war, civil commotion, accident, industrial action, Act of God or any restriction imposed by any local municipal or government authority (including Customs Authorities) whether Australian or foreign, the Company shall be entitled forthwith to terminate the agreement or contract and to be discharged from all liabilities whatsoever to the Customer and the Company shall not be liable for any such loss, damage, injury or delay as aforesaid.

8. Warranty and Limitations of Liability

- 8.1 The Company is not the manufacturer of the goods. All Goods supplied by the Company benefit from the warranty, if any, given by the manufacturer. Where possible this benefit shall be passed on to the Customer accordingly. It shall remain entirely the Customer's responsibility to implement the manufacturers specific 'Instructions for Use' (IFU) of the goods. Similarly it remains entirely the Customer's responsibility to undertake the necessary risk assessment so as to conclusively determine that the goods are or will be used as recommended by the manufacturer of the goods. The Company does not supply or offer to supply any additional services whatsoever in relation to the products purchased and gives no warranties whatsoever in relation to any information sought or furnished as to the operation, suitability for use or otherwise of the relevant goods.
- 8.2 The Company's liability in respect of the Goods shall be limited to the replacement of faulty goods or the issuance of a credit adjustment note in respect thereof or the granting of a refund or equivalent compensatory measures, as the Company at its sole discretion considers appropriate.
- 8.3 Goods returned must be in the original manufacturer's packaging along with a copy of the invoice supplied with the goods and where appropriate be in a clean, disinfected or sterilised condition. Where required the customer will supply the necessary disinfection and or sterilisation certificate to the company and such a certificate is to

accompany the goods being returned to the company. The Company shall not be liable for any loss or damage sustained to the Goods in transit from the Customer.

8.4 The Company shall not be liable in contract, tort or otherwise for any injury, damage or loss resulting from defects or from anything done or omitted in connection with the Goods or from any work done in connection therewith.

8.5 Whilst the Company makes every effort to ensure that all Goods sold are of merchantable quality, the Goods are sold on the understanding that the Company cannot be held responsible for any losses caused through the failure of the Goods to function as the manufacturer intended, or their failure to be delivered within a reasonable time from the acceptance of the purchase order by the Company.

9 Governing Law

9.1 Any agreement or contract between the Company and the Customer shall in all respects be governed by and construed in accordance with Australian law and the Courts of Australia.

9.2 The Courts within the State of New South Wales shall have the jurisdiction to hear all disputes arising in connection with any agreement or contract. Customer and the Company agree to submit to the exclusive jurisdiction of the Courts of New South Wales and the Courts appeal from them.

10 Customer Purchase Orders

10.1 Any Purchase Order placed by the customer on the Company for the supply of goods is deemed to be a Purchase Order incorporating these terms and conditions, notwithstanding any inconsistencies in the Customers Purchase Order. Where the Customer places a Purchase Order for goods which contains terms and conditions different from those herein, subsequent delivery of the goods and or services to the customer shall be deemed to be a counter-offer to supply the goods on these terms and conditions and such a counter-offer shall be deemed to be accepted by the Customer upon acceptance of the goods by the customer.

11 Notice of Disclaimer

11.1 The Notice of Disclaimer shall apply to and be incorporated into every agreement and or contract between the Company and the Customer under which the Company supplies goods to the Customer. The Notice of Disclaimer is a separate notice on this website and is to be read by the customer in conjunction with these terms and conditions of sale.