



TERMS AND CONDITIONS OF PURCHASE ORDER

Every purchase order (**Purchase Order**) you (**Customer**) submit to Wizard Pharmacy Distribution Pty Ltd ACN 656 669 840 (**Seller**) through the Seller's online portal (**Portal**) is an offer to acquire goods and / or services from the Seller subject to these and conditions (**agreement**). Where the Customer submits a Purchase Order (whether through the Portal or otherwise) and the Seller accepts that Purchase Order, there is a contract on this basis. Any terms and conditions in your Purchase Order are excluded, except where this agreement is replaced by a formal agreement for the provision of the goods and services which is signed by the Seller and the Customer.

AGREED TERMS

1 PURCHASE ORDERS

- (a) Receipt by the Seller of a Purchase Order and payment of the Deposit in full and cleared funds creates a binding obligation on the Customer to purchase the Products the subject of that Purchase Order (or such lesser number of Products as determined by the Seller in accordance with clause 1.2) at the then current Price in accordance with the terms of this agreement. The Customer may not change or amend its Purchase Order once submitted.
- (b) Subject to Product availability as described in clause 1.2, the Seller shall use reasonable endeavours to fulfil a Purchase Order by the Delivery Date. The Customer acknowledges and agrees that the Delivery Dates are estimates only and are not binding on the Seller.
- (c) In the event of any delay or failure of delivery, the Seller will not be in breach of this agreement and the Customer agrees that it will not be entitled to a refund of the Deposit.

1.2 Orders where Products are unavailable

Notwithstanding any other provision of this agreement, where the Customer submits a

Purchase Order and the Seller does not have sufficient stock to meet the quantities set out in the Customer's Purchase Order or the Seller is otherwise unwilling or unable to supply all or part of the stock set out in the Customer's Purchase Order for any reason, the Seller shall notify the Customer in writing of that fact and shall, at the Seller's election, and without incurring any liability to the Customer:

- (a) provide the Customer with such quantities of the Products as are available at the intended delivery date, in which case the Customer will be bound to purchase such quantities of the Products as the Seller has available;
- (b) nominate a new delivery date by which the Seller will fulfil the Customer's Purchase Order, whether in part or in full; or
- (c) cancel the Purchase Order and refund the Deposit paid (if any) without any liability on the Seller's part.

2 PROMOTION OF RELATIONSHIP

The Customer agrees to promote its relationship with the Seller and agrees not to engage in any activity which would adversely affect that relationship or the name or reputation of the Seller or the Products.

3 CONDITIONS OF SALE

All sales of Products by the Seller to the Customer are to be governed by the terms of this agreement.

4 PRICE

- (a) The price payable by the Customer for the Products is as specified on the Portal (**Price or Prices**).
- (b) The Seller may, at any time, and from time to time, increase, decrease, adjust or vary the Prices with immediate effect (**Price Variation**).
- (c) A Price Variation will have no effect on any Products that became the subject of a binding Purchase Order prior to the date on which the Price Variation was effected.

5 DEPOSIT

- (a) A non-refundable deposit of 100% of the total value of the Purchase Order must be paid by the Customer to the Seller's Account upon delivery of that Purchase Order, otherwise the Purchase Order will not be accepted by the Seller (**Deposit**).

- (b) The Seller is entitled to retain the full Deposit in the event that this agreement or a Purchase Order is cancelled or terminated by the Customer.
- (c) The Deposit must be paid to the Seller's Account and received by the Seller in full, cleared and available funds, prior to the Products being provided as a condition precedent to any liability or obligation of the Seller arising under this agreement.

6 INVOICING AND PAYMENT

- (a) Invoices shall be issued by the Seller and provided to the Customer on a monthly basis for the Products provided during the invoice period for payment. Each invoice will detail the:
 - (i) Product name and description;
 - (ii) quantity ordered;
 - (iii) unit price;
 - (iv) Delivery Costs;
 - (v) Deposit; and
 - (vi) total price.
- (b) The Customer must pay any outstanding balance amount specified in each invoice in cleared funds by electronic funds transfer to the Seller's Account within 30 days of receipt.
- (c) All payments by the Customer under this agreement must be made without any deduction or set off.
- (d) If the Customer fails to pay any monies payable under this agreement by the due date, the Customer must:
 - (i) pay interest on the overdue moneys at the rate of 12% p.a. from the due date until the date of payment; and
 - (ii) reimburse the Seller on demand for all expenses incurred by the Seller in recovering or seeking to recover the overdue moneys.
- (e) The Seller's right to require payment of interest under clause 6(d) does not affect any other rights or remedies it may have relating to any failure to pay an amount due under this agreement.

7 DELIVERY

7.1 Delivery

- (a) The Seller must deliver, or arrange for the delivery of, the Products to the Customer at the Delivery Address.
- (b) The Customer must make any arrangements necessary to enable the Seller (or its agent) to deliver the Products to the Delivery Address.
- (c) Delivery of the Products is complete when the Customer or its agent takes possession of the Products at the Delivery Address.
- (d) The Seller will use best endeavours to provide the Customer with reasonable notice of the intended or anticipated date for delivery.
- (e) In the event that the Customer fails to take delivery of the Products at the Delivery Address, then the Seller shall store the Products until delivery takes place, at the Customer's cost.
- (f) The Customer must bear, and must reimburse the Seller for, the costs of delivering the Products to the Delivery Address (**Delivery Costs**).

7.2 Delay in delivery

Without limiting any other provision in this agreement, the Seller is not liable for any loss of trade or profit suffered by the Customer if delivery of the Products is frustrated, prevented or delayed for any reason.

8 RISK AND TITLE

- (a) Risk in the Products passes to the Customer on the earlier of:
 - (i) full and final payment by the Customer for the Products; or
 - (ii) when the Customer or its agent takes possession of the Products at the Delivery Address.
- (b) Legal and beneficial ownership and title to the Products remains with the Seller until the Seller has received full payment for the Products.
- (c) Notwithstanding clause 8(d)(iii), if the Customer disposes of the Products:

- (i) the Customer does so as the Seller's fiduciary agent;
 - (ii) the proceeds from such sale are also the property of the Seller; and
 - (iii) the Customer holds the proceeds from such disposal on trust for the Seller.
- (d) Until legal and beneficial ownership and title of the Products pass in accordance with clause 8(b), the Customer:
- (i) must store the Products separately and distinctly from all other goods;
 - (ii) is deemed the bailee of the Seller;
 - (iii) subject to clause 8(c), is permitted to sell the Products, but only in the ordinary course of carrying on its business; and
 - (iv) must not mortgage, charge, secure, pledge or otherwise encumber or allow to be encumbered any Product without the prior written consent of the Seller.
- (e) The Customer acknowledges that:
- (i) this clause 8 constitutes a security interest for the purposes of the PPSA; and
 - (ii) the parties intend for the security interest granted by this agreement to take priority over all other security interests over the Products (and proceeds from disposal of the Products) at any time.
- (f) The Customer warrants and represents that all details and information provided for the Seller to register the security interest on the PPSR is true, correct and complete.
- (g) The Customer agrees to:
- (i) do whatever the Seller requires to ensure that any security interest granted to the Seller under this agreement is enforceable, perfected and otherwise effective;
- (ii) enable the Seller to apply for any PPSR registration in connection with the security interest so that it has the highest ranking priority possible (including without limitation in accordance the priority granted by compliance with section 62 of the PPSA);
 - (iii) not take possession of any Products until the Seller has registered the security interest granted by this agreement on the PPSR (to the Seller's satisfaction);
 - (iv) do anything which the Seller considers necessary for the purpose of exercising any power in connection with the security interest;
 - (v) not make a request under section 275(7)(c) or 275(7)(d) of the PPSA, unless the Seller consents in writing; and
 - (vi) not change any of the details set out in the 'Details' section of this agreement without giving the Seller at least 10 Business Days' prior written notice.
- (h) The Customer waives its rights to receive any notices required to be delivered pursuant to the PPSA, including without limitation any financing statement or financing change statement (as defined in the PPSA) relating to any security interest created under this agreement.
- (i) The parties agree that all provisions listed in section 115 of the PPSA are contracted out of to the extent permitted by law.

9 INTELLECTUAL PROPERTY

9.1 Seller retains rights

The parties acknowledge that the Seller retains all rights to use and property in the Intellectual Property and other intangible rights it has.

9.2 No infringement by Customer

The Customer must not, either during or after the Term, infringe the rights of the Seller in the Intellectual Property.

10 WARRANTIES AND INDEMNITIES

10.1 Customer Warranties

The Customer represents and warrants to the Seller that:

- (a) it has the legal capacity and power to enter into this agreement and perform its obligations under this agreement;
- (b) it has not relied on any statement, representation, warranty, conduct or undertaking made or given by the Seller or any person on its behalf, other than those set out expressly in this agreement;
- (c) it is and will be the person licenced to purchase the Products at the Delivery Address;
- (d) it will comply with all relevant laws and regulations applicable to the Products and any applicable government standards; and
- (e) it will comply with all reasonable directions of the Seller in relation to the usage or sale of the Products (to the extent permitted by law).

10.2 Customer Indemnities

- (a) The Customer indemnifies the Seller and its related parties against all Loss arising directly or indirectly from any:
 - (i) breach by the Customer or any of its officers, employees, agents or contractors of this agreement;
 - (ii) act or omission (including any negligence, unlawful conduct or wilful misconduct) by the Customer or any of its officers, employees, agents and contractors relating to this agreement; and
 - (iii) third party claim brought against the Seller by a customer, consumer or client of the Customer in connection with the Products or the sale or usage thereof.
- (b) Each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the Customer and survives the termination of this agreement.
- (c) It is not necessary for the Seller to incur an expense or make a payment before enforcing any indemnity conferred by this agreement.

10.3 Release

The Customer releases the Seller from any claim that it may have against the Seller as a result of any claim brought against the Customer by its customers, consumers or clients in connection with the Products or the sale or usage thereof.

11 DISPUTE RESOLUTION

11.1 Notice obligation

A party claiming that a dispute arising out of this agreement (**Dispute**) has arisen must notify the other party to the Dispute giving details of the Dispute.

11.2 Reasonable efforts to resolve

During the 20 day period after a notice is given under clause 11.1 (or longer period agreed in writing by the parties to the Dispute) (**Initial Period**) each party must use its reasonable efforts to resolve the Dispute.

11.3 Mediation

If the parties are unable to resolve the Dispute within the Initial Period, each party agrees that the Dispute must be referred for mediation, at the request of either party, to a mediator agreed on by both parties.

11.4 Costs

Each party must bear its own costs of complying with this clause and the parties must bear equally the costs of any mediator engaged.

11.5 General

Subject to clause 11.6:

- (a) any Dispute between the parties must be dealt with in accordance with this clause 11; and
- (b) a party must not commence or maintain any action or proceeding in any court, tribunal or otherwise regarding a Dispute without first complying with the provisions of this clause 11.

11.6 Interlocutory relief

Notwithstanding anything in this clause 11, a party may commence court proceedings in relation to any Dispute or claim arising under or in connection with this agreement where that party seeks urgent interlocutory relief.

12 RELATIONSHIP

The parties agree that this agreement does not create a relationship of employment, agency or partnership between the parties.

13 LIMITATION OF LIABILITY

13.1 General

- (a) The Seller is not responsible for any act or default of the Customer or of the Customer's employees or representatives.
- (b) The Seller disclaims all liability for all loss and damage by way of personal injury, property damage or any other matter which is caused or contributed to by any defect in the handling or maintenance of the Products.
- (c) The Seller is not liable to the Customer or to any third party for any injury or damage to property arising from, or in any way contributed to or by, any act or omission of the Customer, or any representative, servant, employee, or agent of the Customer. The Customer indemnifies, and must keep indemnified, the Seller against any such liability.
- (d) Any advice given by the Seller to the Customer in connection with the Products is in good faith and based upon the Seller's best judgment. The Seller is not liable for any loss suffered by the Customer as a result of relying upon the advice and the Customer acknowledges that the advice is not construed as a warranty or guarantee with respect to any matter referred to in the advice.

13.2 Seller exclusion of warranties

The Seller excludes all express and implied terms, conditions and warranties which might otherwise apply to, or arise out of, this agreement, other than:

- (a) as provided expressly in this agreement; and
- (b) terms, conditions and warranties which cannot lawfully be excluded or modified by agreement.

13.3 Limitation of Liability

If the Seller is liable for a breach of a term, condition or warranty described in clause 13.2, the Seller's liability is, to the fullest extent permitted by law, limited to replacing or repairing the goods or

supplying an equivalent item, or paying the costs or replacing or repairing an equivalent item.

13.4 Consequential loss

Notwithstanding any other clause of this agreement, the Seller and its related parties will under no circumstances be liable to the Customer for:

- (a) damages for loss of profits or savings (actual or anticipated), loss of goodwill, loss of market or loss of use and losses suffered by the Customer due to claims by third parties;
- (b) any indirect, incidental, special or consequential damages; or
- (c) Loss arising from the fraud or wilful misconduct of the Seller's officers, agents and contractors,

whether or not the Seller knew of the possibility of such damage or such damage was otherwise foreseeable.

14 TAXES GENERALLY

Subject to clause 15, the Customer is responsible for and must pay any tax, duty or government extraction of any nature assessed or levied in relation to the Products.

15 GST

15.1 Interpretation

In this clause 15, a word or expression defined in the GST Act which is not otherwise defined in this agreement has the meaning given to it in that Act.

15.2 GST gross up

All consideration provided under this agreement is exclusive of GST unless it is specifically expressed to be GST inclusive. If a party (**Supplier**) makes a taxable supply to another party (**Recipient**) under or in connection with this agreement in respect of which GST is payable, the Recipient must pay the Supplier an additional amount equal to the GST payable on the supply (unless the consideration for the taxable supply was specified to include GST). The additional amount must be paid by the Recipient by the later of:

- (a) the date when any consideration for the taxable supply is first paid or provided; and
- (b) the date when the Supplier issues a tax invoice to the Recipient.

15.3 Adjustment events

If an adjustment event varies the amount of GST payable by a Supplier under this agreement, the Supplier must adjust the amount payable by the Recipient to take account of the adjustment event. Any resulting payment must be paid by the Supplier to the Recipient, or the Recipient to the Supplier (as appropriate) within 10 Business Days of the Supplier becoming aware of the adjustment event. Any payment under this clause is deemed to be an increase or decrease of the additional amount payable under clause 15.2.

15.4 GST refunds

If the GST payable in relation to a supply is less than the amount the Recipient has paid the Supplier under clause 15.2, the Supplier is only obligated to pay a refund of GST to the Recipient to the extent the Supplier receives a refund of that GST from the Australian Taxation Office.

15.5 Reimbursements

Subject to an express provision in this agreement to the contrary, any payment, reimbursement or indemnity required to be made to a party (the **Payee**) under this agreement which is calculated by reference to an amount paid or payable by the Payee to a third party (**Outgoing**) will be calculated by reference to that Outgoing inclusive of GST, less the amount of any input tax credit which the Payee is entitled to claim on that Outgoing.

15.6 Separate supply

If part of a supply is a separate supply under GST law, that part is a separate supply for the purpose of this clause.

15.7 Members of GST groups

Where the Supplier, Recipient or Payee in this clause 15 is a member of a GST group, a reference to the Supplier, Recipient or Payee includes the representative member of the GST group.

15.8 Payments calculated by reference to revenue

Subject to an express provision in this agreement to the contrary, any payment, or amount required to be made under this agreement which is calculated by reference to sales, revenue, income or other amounts received or receivable from a third party (**Revenue**) will be calculated by reference to that Revenue exclusive of GST.

15.9 Clause survives termination

This clause 15 will survive the termination of this agreement by any party.

16 FORCE MAJEURE

16.1 Occurrence of Force Majeure Event

If a Force Majeure Event affecting the Seller precludes the Seller (**Precluded Party**) partially or wholly from complying with its obligations under this agreement then:

- (a) as soon as reasonably practicable after that Force Majeure Event arises, the Precluded Party must notify the other party of:
 - (i) the Force Majeure Event;
 - (ii) which obligations the Precluded Party is precluded from performing (**Affected Obligations**);
 - (iii) the extent to which the Force Majeure Event precludes the Precluded Party from performing the Affected Obligations (**Precluded Extent**); and
- (b) the expected duration of the delay arising directly out of the Force Majeure Event;
- (c) the Precluded Party's obligation to perform the Affected Obligations will, to the Precluded Extent, be suspended for the duration of the actual delay arising directly out of the Force Majeure Event (**Actual Delay**); and
- (d) the other party's obligations to perform any obligations dependent on the Affected Obligations will be suspended until the Precluded Party resumes performance.

16.2 Termination

If the Actual Delay continues for more than 30 days, the other party may terminate this agreement immediately by giving notice to the Precluded Party.

17 NOTICES AND OTHER COMMUNICATIONS

17.1 Service of notices

A notice, demand, consent, approval or communication under this agreement (**Notice**) must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) hand delivered or sent by pre-paid post, courier or email or other electronic means (**Electronic Communication**) to the recipient's address for Notices specified in

the Details, as varied by any Notice given by the recipient to the sender.

17.2 Effective on receipt

A Notice given in accordance with clause 17.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, two Business Days after the date of posting (or seven Business Days after the date of posting if posted to or from outside Australia);
- (c) if sent by courier, on the date of delivery; or
- (d) if sent by Electronic Communications, at the time of transmission unless, within 24 hours of transmission or, if the unsuccessful transmission is as consequence of any act or omission of the sender or defect or deficiency in the sender's transmitting equipment, any time after transmission, the sender receives advice that the transmission has been unsuccessful,

but if the delivery, receipt or transmission is not on a Business Day or after 5.00pm on a Business Day, the notice is taken to be received at 9.00am on the Business Day after that delivery, receipt or transmission.

18 MISCELLANEOUS

18.1 Alterations

This agreement may be altered only in writing signed by each party.

18.2 Access

The Customer grants the Seller (including its officers, agents, nominated representative and contractors) reasonable access to the Customer's premises to the extent reasonably required by the Seller to fulfil its obligations under this agreement or to review the Customer's compliance with any of the terms of this agreement.

18.3 Approvals and consents

Except where this agreement expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this agreement.

18.4 Assignment

A party may only assign this agreement or a right under this agreement with the prior written consent of each other party.

18.5 Stamp duty

Any stamp duty, duties or other taxes of a similar nature (including fines, penalties and interest) in connection with this agreement or a transaction contemplated by this agreement, must be paid by the Customer.

18.6 Survival

Any indemnity or any obligation of confidence under this agreement is independent and survives termination of this agreement. Any other term by its nature intended to survive termination of this agreement survives termination of this agreement.

18.7 Counterparts

This agreement may be executed in counterparts. All executed counterparts constitute one document.

18.8 No merger

The rights and obligations of the parties under this agreement do not merge on completion of any transaction contemplated by this agreement.

18.9 Entire agreement

This agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

18.10 Further action

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this agreement and the transactions contemplated by it.

18.11 Severability

A term or part of a term of this agreement that is illegal or unenforceable may be severed from this agreement and the remaining terms or parts of the term of this agreement continue in force.

18.12 Waiver

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

18.13 Governing law and jurisdiction

This agreement is governed by the law of Western Australia and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia.

19 DEFINED TERMS AND INTERPRETATION

19.1 Defined terms

In this agreement:

Actual Delay has the meaning given to that term in clause 16.1.

Affected Obligations has the meaning given to that term in clause 16.1.

Business Day means:

- (a) for receiving a Notice under clause 17, a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the Notice is received; and
- (b) for all other purposes, a day that is not a Saturday, Sunday, public holiday or bank holiday in Western Australia.

Delivery Address means the address for the delivery of the Products, as set out in the Purchase Order.

Delivery Costs has the meaning given to that term in clause 7.1(f).

Delivery Date means the date for the delivery of the Products, as set out in the Purchase Order (which date is an estimate only).

Deposit has the meaning given to that term in clause 5(a).

Dispute has the meaning given to that term in clause 11.

Force Majeure Event affecting a person means anything outside that party's reasonable control including, but not limited to, fire, storm, flood, earthquake, explosion, war, invasion, rebellion, sabotage, epidemic, pandemic, labour dispute, labour shortage, lock-downs, failure or delay in transportation and act or omission (including laws, regulations, disapprovals or failures to approve) of any third person (including subcontractors, customers, governments or government agencies).

GST has the meaning given to that term in the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Initial Period has the meaning given to that term in clause 11.

Intellectual Property means any trade name, design, logo, symbol or other similar right owned by the Seller.

Loss means any loss (including loss of profit and loss of expected profit), claim, action, liability, damage, cost, charge, expense, outgoing, payment, diminution in value or deficiency of any kind or character which a party pays, suffers or incurs or is liable for, including:

- (a) liabilities on account of taxes or duties levied, imposed or assessed under a tax act or any other statute, ordinance or law in Australia or elsewhere;
- (b) interest and other amounts payable to third parties; and
- (c) legal (on a full indemnity basis) and other expenses incurred in connection with investigating or defending any claim or action, whether or not resulting in any liability, and all amounts paid in settlement of any claim or action.

Notice has the meaning given to that term in clause 17.

Outgoing has the meaning given to that term in clause 15.5.

Payee has the meaning given to that term in clause 15.5.

PPSA means the *Personal Property Securities Act 2009* (Cth).

PPSR has the meaning given to the term 'register' in the PPSA.

Precluded Extent has the meaning given to that term in clause 16.1.

Precluded Party has the meaning given to that term in clause 16.1.

Products means those items sold by the Seller to the Customer under this agreement.

Recipient has the meaning given to that term in clause 15.2.

Revenue has the meaning given to that term in clause 15.8.

Seller's Account means the following banking details:

BSB	086-082
Account Number	41-500-3035
Account Name	Wizard Pharmacy Distribution Pty Ltd

1.2 Interpretation

In this agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph or schedule is to a clause or paragraph of, or schedule to, this agreement, and a reference to this agreement includes any schedule;
- (d) a reference to **\$** or **dollars** is to Australian currency;
- (e) a reference to time is to Perth, Western Australia time;
- (f) a reference to a party is to a party to this agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (g) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (h) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (i) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;

- (j) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it; and
- (k) a reference to 'absolute discretion' means not having to consider the interest of other parties when giving a consent, approval or making a determination.

1.3 Business Days

If the day on which any act to be done under this agreement is a day other than a Business Day, that act must be done on or by the next Business Day except where this agreement expressly specifies otherwise.