

# TERMS & CONDITIONS

**Clifford Hallam Healthcare Pty Ltd**  
(ACN 001 655 554)

**September 2023**

## Clifford Hallam Healthcare Pty Ltd Terms & Conditions of Sale

### 1. DEFINITIONS

The following definitions apply in this document:

**Australian Consumer Law** means the Australian Consumer Law embodied in Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

**Australian Dangerous Goods Code** means the Australian Code for the Transport of Dangerous Goods by Road & Rail, as amended from time to time.

**Backorder** means items that are temporarily out of stock but shipments are on their way to re-stock the CH2 warehouse.

**Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in New South Wales.

**Buy to Backorder Lines** means a line that CH2 determines will be sold in accordance with the vendor's minimum order requirement.

**CH2** means Clifford Hallam Healthcare Pty Ltd (ABN 38 001 655 554).

**CH2 Catalogue** has the meaning ascribed to it by the Therapeutic Goods Administration Register and manufacturer's certification for the relevant product.

**CH2 Stockline** means a line that CH2 determines can be sold in accordance with CH2's units of measure, regardless of vendor minimum order requirements.

**CH2's Website** means <http://www.ch2.net.au>

**Cold Chain Products** means Products that must be stored between two and eight degrees Celsius (inclusive) or as instructed by the Therapeutic Goods Administration sponsor.

**Consumer** has the meaning set out in section 3 of the Australian Consumer Law.

**Consumer Guarantees** means the guarantees relating to the supply of goods and services to Consumers provided by Division 1 of Part 3-2 of the Australian Consumer Law.

**Controller** has the same meaning as in the Corporations Act.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Credit Returns Advice Form** means a form of that name requested by the Customer from CH2 by calling CH2 and by quoting the original invoice number.

**CSO Arrangement** means an agreement between CH2 and the Commonwealth Government of Australia to support the distribution of product by CH2 to community pharmacies.

**Customer** means any person or entity who purchases Products from CH2.

**Customer Account Application** means a completed CH2 Customer Account Application between CH2 and the Customer.

**Dangerous Goods** means Products that satisfy the relevant criteria of dangerous goods, or are determined to be dangerous goods according to the Australian Dangerous Goods Code.

**Dangerous Goods Fees** means a fee charged to the Customer in respect of an order for Dangerous Goods, in addition to any applicable Delivery Fee. Dangerous Goods Fees which the Customer may expect to be charged in respect of orders for Dangerous Goods are set out in the Schedule to these Terms.

**Delivery Fee** means a fee on account of freight and handling in respect of an order of Products. Delivery Fees which the Customer may expect to be charged are set out in the Schedule to these Terms.

**Emergency Order** means an order that is placed and required to be delivered on the same day, or otherwise before the scheduled delivery time.

**Emergency Order Fees** means a fee charged to the Customer in respect of labour and delivery, to fulfil an Emergency Order. Emergency Order Fees which the Customer may expect to be charged in respect of an Emergency Order are set out in the Schedule to these Terms.

**Event of Default** means an event or circumstance described in clause 15.1.

**Force Majeure Event** means an act of war (whether declared or not) or terrorism, the mobilisation of armed forces, civil commotion or riot, natural disaster, industrial action or labour disturbance, currency restriction, embargo, action or inaction by a government agency, a failure of a supplier, public utility or common carrier or computer disruption due to the effects of a virus or other malicious code introduced other than through the acts or omissions of the party seeking relief.

**GST** means the goods and services tax (if any) chargeable under the *A New Tax System (Products and Services Tax) Act 1999* (Cth).

**Knock Out** means the stock on hand qty has changed from the time that an order has been placed resulting in there not being enough stock on to fulfil a sales order at the time.

**Insolvency Event** means, in respect of a person:

- (a) an administrator being appointed to the person;
- (b) the person resolving to appoint a Controller or analogous person to the person or any of the person's property;
- (c) an application being made to a court for an order to appoint a Controller, provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the person or any of the person's property; or
- (d) an appointment of the kind referred to in paragraph (c) being made (whether or not following a resolution or application);
- (e) the holder of a Security Interest or any agent on its behalf, appointing a Controller or taking possession of any of the person's property (including seizing the person's property within the meaning of section 123 of the PPSA);

- (f) the person being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (g) an application being made to a court for an order for its windingup;
- (h) an order being made, or the person passing a resolution, for its winding up;
- (i) the person:
  - (i) suspending payment of its debts, ceasing (or threatening to cease) to carry on all or a material part of its business, stating that it is unable to pay its debts or being or becoming otherwise insolvent; or
  - (ii) being unable to pay its debts or otherwise insolvent;
- (j) the person taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;
- (k) a court or other authority enforcing any judgment or order against the person for the payment of money or the recovery of any property; or
- (l) any analogous event under the law of any applicable jurisdiction,

unless this takes place as part of a solvent reconstruction, amalgamation, merger or consolidation that has been approved by CH2.

**Minimum Order Quantity** means the minimum order quantity prescribed by CH2's online order system.

**Minimum Quantity Fees** means additional fees charged to the Customer where the order placed by the Customer does not meet the Minimum Order Quantity. Minimum Quantity Fees which the Customer may expect to be charged are set out in the Schedule.

**Nutritional Products** means oral intake dietary food.

**PBS** means the Australian Government Pharmaceutical Benefits Scheme.

**PBS Listed Price** means the price listed on the PBS in respect of a PBS Medicine Product.

**PBS Medicine Products** means products the Schedule of products available to be dispensed to patients at an Australian Government subsidised price under the PBS.

**PPS Security Interest** means a security interest that is subject to the PPSA.

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

**Privacy Policy** means CH2's privacy policy which may be found at <http://www.ch2.net.au/> or by contacting the CH2's privacy officer.

**Products** means and goods or products supplied by CH2 to a Customer.

**Product Claim** means a claim submitted to a CH2 customer service representative for a Return Credit in accordance with clause 9.

**Product Claim Number** means a number issued to the Customer at the time of requesting a Credit Returns Advice Form.

**Restocking Fee** means a fee of not less than \$30 charged by CH2 to the Customer for in restocking goods that are returned to CH2 in respect of a Customer error or change of mind, as set out in clause 10. Restocking Fees which the Customer may expect to be charged are set out in the Schedule to these Terms.

**Retail Pharmacy Customer** means a Customer that is ordinarily engaged in the business of operating a retail pharmacy

**Return Credit** means credit provided by CH2 to the Customer which may be used by the Customer to order Products from CH2 to the value of the credit.

**Return Timeframe** has the meaning set out in clause 9.3.

**Security Interest** means:

- (a) a PPS Security Interest;
- (b) any other mortgage, pledge, lien or charge; or

any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property.

**Statement** means a statement of the Customer's account with CH2 that summarises all transactions with a customer that occurred over the previous month, and their effect on an open-account balance.

**State Government Contract** means an agreement between CH2 and any State or Territory Government for the supply of Products to Customers listed in that agreement.

**Terms** means these terms and conditions, as varied from time to time.

**Therapeutic Goods Administration** means the Australian Government authority operated by the Department of Health responsible for regulating the supply, import, export, manufacturing and advertising of therapeutic goods.

**Therapeutic Goods Administration Register** means therapeutic goods entered in the Australian Register of Therapeutic Goods maintained by the Therapeutic Goods Administration that can lawfully be supplied in Australia.

**Trade Credit Facility** means the trading account selected by the Customer and approved by CH2 in the "Trading Terms" section of a completed and approved Customer Account Application, including a Trade Credit Facility with a Retail Pharmacy Customer.

## 2. INTERPRETATION

### 2.1 Rules for interpreting this document

- (a) Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this agreement, except where the context makes it clear that a rule is not intended to apply.
- (b) A reference to:
  - (i) currency means Australian dollars;

- (ii) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - (iii) a deed, document (including this document) or agreement, or a provision of a deed, document (including this document) or agreement, is to that deed, document, agreement or provision as amended, supplemented, replaced or novated;
  - (iv) a party to this agreement or to any other deed, document or agreement includes a permitted substitute or a permitted assign of that party;
  - (v) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
  - (vi) anything (including a right, obligation or concept) includes each part of it.
- (c) A singular word includes the plural, and vice versa.
  - (d) A word which suggests one gender includes the other genders.
  - (e) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
  - (f) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.

### **3. TERMS**

- 3.1 These Terms apply whenever CH2 supplies any Products to a Customer, unless otherwise expressly agreed in writing.
- 3.2 By requesting a supply of Products from CH2, the Customer acknowledges and agrees:
  - (a) that they have been given the opportunity to read these Terms;
  - (b) that CH2 recommends that they read these Terms and discuss any terms that they do not understand with a CH2 representative or an independent advisor before requesting a supply of Products; and
  - (c) to be bound by these Terms.
- 3.3 If CH2 and the Customer have entered into a State Government Contract or CSO Arrangement, the terms of that contract prevail (if expressly stated) over these Terms, to the extent of any inconsistency.
- 3.4 These Terms prevail over any terms in any other CH2 document, to the extent of any inconsistency.

- 3.5 The United Nations Convention on Contracts for the International Sale of Products shall apply to the sale and purchase of the Products, except to the extent of any inconsistency with these Terms, in which case these Terms shall prevail.
- 3.6 The Customer may negotiate these Terms with CH2. However, unless CH2 agrees in writing, no waiver, variation or addition to these Terms requested by the Customer shall have any effect whatsoever.

#### **4. SALE AND PURCHASE**

- 4.1 CH2 agrees to sell and the Customer agrees to purchase the Products referred to in a purchase order issued by the Customer and accepted by CH2.
- 4.2 The Customer cannot cancel any purchase order for Products after it has been accepted by CH2 and must pay the price for those Products, unless CH2 expressly agrees otherwise in writing.

#### **5. PAYMENT**

- 5.1 Unless otherwise agreed by CH2 in writing, payment for Products is due in full, without deduction, withholding or set-off, thirty (30) days from the date of the invoice issued by CH2. For the avoidance of doubt, where the Customer has an approved Trade Credit Facility, CSO Arrangement or State Government Contract with CH2, payment for the Products must be made in accordance with those terms.
- 5.2 Products are invoiced by CH2 on the day they are despatched from CH2 to the Customer.
- 5.3 Payment must be made by electronic funds transfer, credit card or debit card, unless CH2 has agreed to process payment by another means.
- 5.4 CH2 will never ask you to change banking details that differ from those nominated on our invoice over the phone, via text message or on email. Should you receive a purported notification of a change of CH2's banking details this should be verified with your known and verified CH2 contact over the phone before any payment is made. CH2 will not be responsible for payments made other than to CH2's nominated bank account.

#### **6. PRICING**

- 6.1 Unless otherwise agreed, the price for the Products, to be charged by CH2 to the Customer, is the prevailing price available on CH2's Website at the time the Customer places an order for Products.
- 6.2 Unless specified on the invoice, all prices are exclusive of GST.
- 6.3 GST is payable by the Customer at the same time as the price for the relevant Products.
- 6.4 Written quotations are only valid for one (1) calendar month, unless otherwise agreed.
- 6.5 CH2 may vary its price for any Product at any time without notice to the Customer. If CH2 varies its prices, the prices as varied become the prevailing prices available on CH2's Website. The price for an order is the prevailing website price at the time the Customer places that order. For the avoidance of doubt, prices as varied do not apply to any purchase
- 6.6 orders already accepted by CH2.
- 6.7 In the instance of a warehouse knock out occurring on a basket deal, the customer may be

subject to a credit and recharge without notice when a minimum order quantity has not been met.

6.8 All prices quoted by CH2 include standard packaging for delivery within Australia



## **7. ORDERS**

- 7.1 Purchase orders must be placed by the Customer with CH2 by phone, fax, electronic interface or using CH2's Website. Phone and fax orders will may be changed an additional processing fee.
- 7.2 Receipt of a purchase order does not constitute acceptance of that order byCH2.
- 7.3 CH2 may accept or reject a purchase order, using its reasonable discretion, in order to protect its legitimate business interests.
- 7.4 In particular, CH2 may not accept a purchase orderthat:
- (a) is not in the units of measure prescribed in the CH2 Catalogue; and
  - (b) is for Products that do not meet the relevant manufacturer's minimum order quantity and requirements (other than CH2 Stockline Products).
- 7.5 An order will be deemed to be accepted on the earlier of CH2 sending an order acknowledgement in writing to the Customer, or the Products being delivered.
- 7.6 CH2 will accept purchase orders within 2 days. If a purchase order is not accepted within this timeframe it is deemed to have been declined byCH2.
- 7.7 CH2 will not be liable to the Customer or any third party for declining anorder.
- 7.8 If the Products ordered are temporarily out of stock, CH2 will notify the Customer and may accept the purchase order on Backorder at the Customer's express written request.

## **8. AUSTRALIAN CONSUMER LAW**

- 8.1 CH2's supply of Products to the Customer may be subject to obligations with respect to Consumer Guarantees under the Australian Consumer Law. Nothing in these Terms is intended to exclude, restrict or modify any rights of the Customer or obligations of CH2 under the Consumer Guarantees provisions of the ACL, in respect of any Customer that is a Consumer.
- 8.2 To the extent that any Customer is not a Consumer, the Consumer Guarantees under the Australian Consumer Law are excluded to the maximum extent permissible by law.

## **9. PRODUCT CLAIMS AND RETURNS**

- 9.1 Subject to the Australian Consumer Law and these Terms, if the Products that are delivered by CH2 to the Customer:
- (a) do not match the Products ordered by the Customer;
  - (b) are short supplied; or
  - (c) are materially defective,
- the Customer may make a Product Claim with CH2.

- 9.2 A Product Claim is made by:
- (a) the Customer properly completing a Credit Returns Advice Form that (among other things):
    - (i) is signed by the Customer;
    - (ii) itemises the Products being returned and explains the reasons for return;
    - (iii) confirms that the Products have been stored at all times according to the label conditions and other applicable requirements imposed by law, regulation or recommendation by CH2 or the manufacturer; and
    - (iv) attaches a copy of the original signed and dated invoice for the returned Products,
  - (b) returning the Products to CH2 in the manner specified in clause 9.3 below.
- 9.3 Subject to the Australian Consumer Law, Products in respect of which a Product Claim is made must be returned to CH2 as follows:
- (a) within:
    - (the **Return Timeframe**)
    - (i) seven (7) days of delivery for all products excluding buy to backorder lines, cold chain products and nutritional products
  - (b) properly packed;
  - (c) clearly labelled with the Product Claim Number;
  - (d) using a carrier nominated by CH2 prior to the return being made; and
  - (e) accompanied by a CH2 Credit Returns Advice Form duly completed and signed by the Customer in the manner specified in clause 9.2(a) above.
  - (f) Buy to back order, cold chain products and nutritional products are non returnable
- 9.4 Subject to the Australian Consumer Law and these Terms, CH2 may accept or reject a Product Claim in its reasonable discretion, in order to protect its legitimate business interests.
- 9.5 The provision of a Credit Returns Advice Form to the Customer does not of itself indicate acceptance, approval or authorisation by CH2 of a Product Claim.
- 9.6 A Product Claim is accepted by CH2 on the earlier of:
- (a) CH2 expressly notifying the Customer of acceptance of the Product Claim in writing; or
  - (b) providing the Customer with Return Credit.

- 9.7 Subject to the Australian Consumer Law and these Terms, a Product Claim may be rejected by CH2 if:
- (a) the Customer does not comply with the Return Timeframe;
  - (b) the Products returned do not match the description on the CH2 Credit Returns Advice Form;
  - (c) the Products have been used;
  - (d) the Products are received by CH2 in a damaged or unsaleable condition and/or are not in their original packaging;
  - (e) the Products were not stored and/or shipped pursuant to the manufacturer's or CH2's recommendations; or
  - (f) the Products are not returned to CH2's nominated warehouse.

## 10. CHANGE OF MIND/CUSTOMER ERROR RETURNS

- 10.1 CH2 may, in its reasonable discretion, accept a Product Claim that is made by a Customer for a reason that is not specified in clause 9.1 above, that otherwise complies with clause 9 (*Product Claims and Returns*) above.
- 10.2 If a Product Claim is made for a Customer error or change of mind and CH2 accepts that Product Claim, CH2 may charge the Customer a Restocking Fee, Delivery Fee and any cost incurred by CH2 as a result of the Product Claim.

## 11. DELIVERY AND RISK

- 11.1 Unless otherwise agreed in writing,
- (a) CH2 will arrange for the Products to be delivered to the Customer at the Customer's nominated address; and
  - (b) CH2 will charge the Customer a Delivery Fee in respect of delivery of the Products.
- 11.2 Risk in the Products shall pass to the Customer:
- (a) immediately upon delivery to the Customer; or
  - (b) where the Customer is to arrange delivery, when the Products are made available for collection by CH2 to the Customer.
- 11.3 Any time stated for delivery is an estimate only. Failure to meet the estimated delivery time does not give the Customer a right to reject or refuse to pay for the Products as required under clause 5 (*Payment*) above. CH2 is not liable to the Customer or any third party for any loss or damage or consequential loss or damage arising from late delivery.
- 11.4 CH2 is not liable in respect of any failure to deliver the Products that is caused by the Customer's provision of inadequate or incorrect instructions relevant to

the delivery of the Products. Failure to deliver the Products by CH2 in these circumstances does not give the Customer a right to reject the Products.

- 11.5 Products will be delivered during CH2's normal business hours. If CH2 agrees to deliver Products outside of CH2's normal business hours, the Customer agrees that CH2 may impose an additional delivery and handling charge in addition to the applicable Delivery Fee.
- 11.6 The Products will be delivered using methods and carriers selected by CH2. If the Customer requests other arrangements for delivery, the Products will be transported at the Customer's own cost and risk.
- 11.7 Where:
- (a) the Customer does not take delivery when the Products are ready; or
  - (b) the Customer orders the Products for collection and does not collect the Products within ten (10) Business Days after the specified collection date,

CH2 is entitled to store the Products, or deliver them to one of the Customer's addresses, without notice or liability and at the Customer's own cost and risk.

## **12. TITLE**

- 12.1 The property and title to the Products shall not pass from CH2 until the Customer's indebtedness to CH2 pursuant to any invoices from CH2 to the Customer is paid in full.
- 12.2 Until such payment in full is made:
- (a) the Customer shall keep the Products for and on behalf of CH2 in its capacity as a fiduciary and subject to these Terms;
  - (b) CH2 authorises the Customer to sell or use the Products, in the ordinary course of the Customer's business, as CH2's fiduciary agent for the account of CH2 only;
  - (c) the proceeds of sale are the property of CH2 and the Customer shall hold such proceeds for and on behalf of CH2 in a fiduciary capacity;
  - (d) the Customer shall pay such proceeds of sale into a separate account for and on behalf of CH2 and shall keep separate records as to the Products sold and as to the amounts received;
  - (e) the Customer shall ensure that the Products are stored in such a way that they do not become spoilt or damaged and are clearly identifiable as the property of CH2 and are not intermingled with the property of the Customer or of any other person; and
  - (f) the Customer shall not in any way alter or treat the Products so as to change the quality or nature in any way so that they cannot be distinguished until such time as full payment has been made.

- 12.3 The authority to sell and use the Products granted in clause 12.2(b) above is revoked immediately if an Event of Default occurs, or if CH2 revokes that authority in writing.
- 12.4 Until payment is made to CH2 in full, the Customer shall not grant any prior ranking Security Interest over, lease, assign or otherwise deal with the Products, except as permitted by these Terms or with the written consent of CH2.
- 12.5 At the time the Customer has control of the Products, the Customer must fully insure the Products against loss or damage, ensuring that CH2's interest as owner is noted on the policy.

### **13. PERSONALPROPERTYSECURITIES ACT 2009**

- 13.1 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 CH2 in all Products and their proceeds supplied by CH2 to the Customer at any time to secure the payment of all amounts, and the performance of all obligations, owing by the Customer to CH2 in connection with any such Products.
- 13.2 The Customer agrees, at its cost, to provide such information, sign such documents and do such other things as CH2 may require in order to enable CH2 to register and perfect that security interest and obtain and maintain a first ranking priority position over the Products and their proceeds.
- 13.3 Subject to the Australian Consumer Law and these Terms, to the maximum extent permitted by law, the parties agree that:
- (a) the Customer waives any right to receive a verification statement under the PPSA in respect of any Security Interest created by these Terms; and
  - (b) for the purposes of sections 115(1) and 115(7) of the PPSA:
    - (i) the CH2 need not comply with sections 95, 118, 121(4), 129, 125, 130, 132(3)(d), 132(4); 134(1), 135; and
    - (ii) sections 142 and 143 are excluded;
  - (c) for the purposes of section 115(7) of the PPSA, the Secured Party need not comply with sections 132 and 137(3),
- 13.4 Terms defined in the PPSA shall have the same meaning when used in this clause.
- 13.5 CH2 and the Customer agree not to disclose information of the kind mentioned in section 275(1) of the PPSA, except in the circumstances required by sections 275(7)(b) to (e) of the PPSA.
- 13.6 The Customer agrees that it will only authorise the disclosure of information under section 275(7)(c) or request information under section 275(7)(d) if CH2 approves.

13.7 Nothing in this clause will prevent any disclosure by CH2 that it believes is necessary to comply with its other obligations under the PPSA.

#### **14. COMPLIANCE WITH LAWS, REQUIREMENTS AND GUIDELINES**

14.1 The Customer must hold all necessary licences and comply with all applicable laws and product manufacturer requirements relating to the purchase, storage, sale, marking or use of the Products, including complying with all relevant adverse event reporting requirements, Therapeutic Goods Administration regulations and guidelines and information issued by product manufacturers from time-to-time.

14.2 If the Customer is directed to assist in any suspension of supply or recall of Products for any reason by CH2, the Therapeutic Goods Administration or any health authority, the Customer will cooperate and comply with all such reasonable directions to ensure the most effective response to the suspension or recall.

14.3 To the extent that CH2 is entitled to recover the costs of the suspension or recall from the relevant product manufacturer or supplier, CH2 will reimburse to the Customer any reasonable and necessary costs incurred by the Customer in connection with the suspension.

#### **15. CUSTOMER DEFAULT**

15.1 Each of the following events or circumstances is an Event of Default:

- (a) **(non-payment)** if the Customer fails to pay any amount that is due and payable by it under clause 5 (*Payment*);
- (b) **(other obligations)** if the Customer fails to comply with any of its obligations under these Terms (or any other agreement with CH2) (other than a failure referred to elsewhere in this clause) and:
  - (i) CH2 reasonably considers that the failure cannot be remedied; or
  - (ii) CH2 considers that the failure can be remedied, and the failure is not remedied within ten (10) Business Days after it occurs;
- (c) **(Insolvency Event)** if an Insolvency Event occurs in respect of the Customer.

15.2 If an Event of Default occurs in respect of the Customer then without limiting any other right or remedy CH2 may have, CH2 may at any time without notice to the Customer:

- (a) suspend or terminate any or all existing and future contracts with the Customer for the supply of Products, and recover from the Customer any costs associated with such termination, including (but not limited to) packaging, storage or transport costs, loss of profits and any reduction in value of the Products;

- (b) suspend, cancel or vary any credit terms including (but not limited to) under any Trade Credit Facility and require immediate payment of any or all amounts outstanding;
  - (c) enter on any premises where the Products are located and take possession of and remove the Products; and/or
  - (d) dispose of the Products in any manner CH2 sees fit.
- 15.3 The Customer irrevocably authorises CH2, its agents and contractors to enter the Customer's premises without notice in order to exercise its rights under these Terms, following an Event of Default.
- 15.4 The Customer must procure all other consents and rights necessary to enable, and to indemnify CH2 (and its agents and contractors) from and against any liability incurred in connection with, the exercise by CH2 of such rights.
- 15.5 The Customer will pay on demand all costs (including legal costs on a solicitor/client basis) incurred by CH2 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 CH2 in connection with these Terms.
- 15.6 If a Customer is also a supplier of CH2 and CH2's account with the Customer is overdue, CH2 may set off any amounts owed by CH2 to the supplier under any other agreement against any amounts owed by the Customer to CH2 pursuant to these Terms.

## **16. INTEREST**

- 16.1 Where the Customer is in default of its and remedies CH2 may have available under this document, CH2 will be entitled to interest of ten and one half percent (10.5%) on amounts that are overdue, until payment is made in full.
- 16.2 Interest is calculated daily from the due date for payment and compounded.

## **17. NOTICES**

- 17.1 A notice, consent or other communication that complies with this clause is regarded as given and received:
- (a) if it is sent or delivered in electronic form (by email or fax)
    - (i) by 5.00 pm (local time in the place of receipt) on a Business Day - on that day; or
    - (ii) after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day - on the next Business Day; and
  - (b) if it is sent by mail:

- (i) within Australia - three Business Days after posting; or
- (ii) to or from a place outside Australia - seven Business Days after posting.

17.2 CH2's address for notices is 17 Hudson Court, Keysborough, VIC, 3173.

17.3 The Customer's address for notices is any of the following:

- (a) the email address, fax number or address provided in the Customer's Account Application Form; or
- (b) if the Customer has not completed a Customer Account Application Form, any email address, fax number or address provided on a purchase order and if none is provided, its registered address.

## **18. LIABILITY AND INDEMNITY**

18.1 To the maximum extent permitted by law (including the Australian Consumer Law), CH2's liability for any defect in the Products or their supply (including any breach of warranty) is limited, at CH2's option, to supplying equivalent Products or paying the cost of repairing or replacing the Products or supplying equivalent Products.

18.2 To the maximum extent permitted by law, CH2, its employees and agents shall not be liable for any loss or damage, or loss of goodwill (including consequential loss or damage or loss of goodwill) of any kind whatsoever.

18.3 The Customer indemnifies CH2 for all liabilities, losses, damages, costs or expenses suffered or incurred by CH2 as a result of any act or omission of the Customer, including (without limitation) loss incurred as a result of the Customer:

- (a) cancelling any order or part of any order;
- (b) unloading, storing or handling the Products;
- (c) failing to comply with any manufacturer instructions regarding the Products or with any laws relating to the storage, handling, sale, marking or use of the Products;
- (d) making, or allowing to be made, any statement in respect of the operation, application, appropriateness and use of the Products; or
- (e) breaching any of the Customer's obligations under these Terms,

except to the extent that CH2 has contributed to that loss by CH2's negligence or default.

## **19. FORCE MAJEURE**

19.1 CH2 will not be liable, and the Customer will not be entitled to cancel any purchase order, for any delay or failure by CH2 to perform its obligations under



these Terms caused by any event or circumstance beyond CH2's reasonable control including a Force Majeure Event.

## **20. PRIVACY**

- 20.1 These terms incorporate the CH2 Privacy Policy.
- 20.2 CH2 may, in accordance with its Privacy Policy and any applicable law, collect and hold personal information about the Customer from any source CH2 considers appropriate for the purposes of:
- (a) providing commercial trade credit to the Customer;
  - (b) the administration and management of the Customer's accounts with CH2;
  - (c) market research;
  - (d) marketing CH2s Products and services (or those of its related companies); and
  - (e) any other purpose relating to these Terms.
- 20.3 The Customer authorises CH2 to:
- (a) disclose the Customer's personal information to any third party, including (but not limited to) a credit reporting agency for the purpose of preparing a Credit Report; and
  - (b) transfer the Customer's personal information to any country, in connection with any of the purposes set out above.
- 20.4 The Customer agrees to CH2 obtaining personal information about it from other credit providers, whose names the Customer may have provided to CH2 or that may be named in a Credit Report, for the purpose of assessing this application.
- 20.5 The Customer has a right of access to, and may request correction of, personal information held by CH2 about the Customer.

## **21. FEES AND CHARGES**

- 21.1 The Customer agrees that it may be subject to the following fees and charges:
- (a) Delivery Fees;
  - (b) Fax Order Fees
  - (c) Dangerous Goods Fees;
  - (d) Minimum Quantity Fees;
  - (e) Emergency Order Fees; and
  - (f) credit and debit card processing fees as follows:

- (i) a fee of 1.018% of the sum of the Products ordered for orders paid for by Visa and Mastercard credit cards;
  - (ii) a fee of 1.80 % of the sum of the Products ordered for orders paid for by American Express credit cards; and
  - (iii) a fee of 0.95% of the sum of the Products ordered for orders paid for by direct debit..
  - (iv) All fees are exclusive of gst.
- 21.2 PBS Medicine Products that are ordered in a lower unit of measure than listed on the PBS may be subject to a 10% surcharge on the PBS Listed Price.
- 21.3 All customers are subject to a \$5.00 per order fee if an order is placed via fax.
- 21.4 If the Customer is a Retail Pharmacy Customer, the Customer may also incur the following fees and charges:
- (a) a monthly account holding fee of \$100, where the Customer's monthly spend with CH2 is less than \$5,000; and PharmX Fees.
- 21.5 Customers may request a printed Statement for a fee of \$5 per Statement. Statements are ordinarily provided free of charge through the CH2 Link Portal, which is accessible at CH2's Website.
- 21.6 All fees described in this clause 21 are expressed to be exclusive of GST.

## **22. ENTIRE AGREEMENT**

- 22.1 These Terms constitute the entire agreement between the parties for the supply of the Products and supersede and exclude any previous 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 to the extent of any inconsistency, except in the case of a State Government Contract and CSO Arrangement, and only to the extent permitted by law.

## **23. ASSIGNMENT AND CHANGE OF OWNERSHIP**

- 23.1 The Customer will no later than fourteen (14) days prior to any proposed change of ownership, change in its particulars, and any alteration or addition to shareholders or directors, notify CH2 in writing of the proposed change.
- 23.2 CH2 may assign any of its rights and novate any of its obligations to any person.
- 23.3 The Customer may not assign any of its rights and obligations to any person without the prior written consent of CH2. Such consent will not be unreasonably withheld by CH2.

**24. GOVERNING LAW AND EXCLUSIVE JURISDICTION**

- 24.1 The proper law relating to the supply of the Products is the law of the State of Victoria and the Customer agrees to submit to the exclusive jurisdiction of the Courts of that State.
- 24.2 The Customer expressly agrees to transfer at its cost any proceeding brought in a Court outside the jurisdiction of Victoria to a Court or Registry in that State.

**SCHEDULE OF FEES**

Category	Standard Cost
Delivery Fees	<p><b>Metropolitan Primary Care Customer Fees</b> Orders under \$250 excluding GST are charged a \$20 plus gst Freight Fee.</p> <p>Orders under \$250 excluding GST that include a cold chain order are charged a \$25 plus GST Freight and Cold Chain Fee.</p> <p><b>Regional Primary Care Customer Fees</b> All Regional Primary Care orders are subject to the below Freight and Cold Chain Fees.</p> <p>Freight Fee of \$30 plus gst. Freight and Cold Chain Fee of \$50 plus gst.</p> <p><b>Metropolitan Community Customer Fees</b> Orders under \$250 excluding GST are charged a \$9.95 plus gst Freight Fee.</p> <p>Orders under \$250 excluding GST that include a cold chain order are charged a \$25 plus GST Freight &amp; Cold Chain Fee.</p> <p><b>Regional Community Customers</b> All Regional Community Customers are subject to the below Freight and Cold Chain Fees.</p> <p>Freight Fee of \$30 plus gst. Freight and Cold Chain Fee of \$50 plus gst.</p> <p><b>All Other Metropolitan Customer Groups (excluding retail pharmacy)</b> Orders under \$500 excluding GST are charged a \$25 plus GST Freight Fee.</p> <p>Orders under \$500 excluding GST that include a cold chain order are charged a \$25 plus GST Freight and Cold Chain Fee.</p> <p><b>All Other Regional Customer Groups (excluding retail pharmacy)</b> Orders under \$500 excluding GST are charged a \$30 plus gst for Freight Fee.</p> <p>Orders under \$500 excluding GST that include a cold chain order are charged a \$50 plus GST Freight &amp; Cold Chain Fee.</p>
Minimum Quantity Fees	<p>\$25 per order (unless the Products include Cold Chain Products in which case the Minimum Quantity Fee is \$37.50 per order)</p>

Category	Standard Cost
Fax Order Fees	\$5 fee for every order that is placed via fax.
Monthly Account Keeping Fee	For Retail Pharmacy customers monthly account holding fee of \$100, where the Customer's monthly spend with CH2 is less than \$5,000
Emergency Order Fees	\$100 (on account of labour costs) plus any applicable Delivery Fees
Dangerous Goods Fees	\$2 per line in respect of each line of Dangerous Goods ordered by the Customer
Restocking Fees	10% of the value of the Products ordered depending on the processing cost incurred by CH2 in restocking the Products  The minimum Restocking Fee is \$30.

All fees described in this Schedule are *exclusive* of GST.