

1. Interpretation
In these conditions unless the contrary intention appears:
"Additional Charges" includes all delivery, handling and storage charges, goods and services tax, stamp duty, interest, legal and other costs of recovery of unpaid money and all other government imposts and all money, other than the Purchase Price, payable by the Customer to Seller arising out of the sale of the Goods.
"Customer" means the person to or for whom the Goods are to be supplied by Seller.
"Goods" means the goods sold and, if any, services provided to the Customer by Seller.
"Purchase Price" means the list price for the goods as charged by Seller at the date of delivery or such other price as may be agreed by Seller and the Customer prior to delivery of the Goods.
"Seller" means Wintur Pty Limited trading as Wintur Healthcare ABN 15 119 824 332.
2. Order for Goods
2.1 An order given to Seller is binding on Seller and the Customer, if:
(a) a written acceptance is signed for or on behalf of Seller; or
(b) the Goods are supplied by Seller in accordance with the order.
2.2 An acceptance of the order by Seller is then to be an acceptance of these conditions of sale by Seller and the Customer and these conditions of sale will override any conditions contained in the Customer's order. Seller reserves the right to accept a part only of any order by notifying the Customer in writing or by delivering the Goods to the Customer. No order is binding on Seller until accepted by it.
2.3 An order which has been accepted in whole or in part by Seller cannot be cancelled by the Customer without obtaining the prior written approval of Seller, which it may refuse in its absolute discretion.
2.4 The Seller will provide to the Customer instructions for use related to the Goods and detailed instruction manuals (where available) for the intended purpose stated by the Seller and the Customer must ensure that its employees and agents and any other person under the care or control of the Customer that uses the Goods comply with such instructions.
2.5 The Customer agrees to indemnify and hold the Seller, its officers and employees harmless against all losses and claims (including claims by the Customer, its agents, or employees or any regulatory body) for death, personal injury, property damage or damage arising out of the use or misuse of the Goods.
2.6 The Customer agrees that it has made the order according to its own assessment as to the suitability of the Goods for its intended purpose and to the extent permitted by law, the Seller is not liable for any loss or damage due to the Goods being used for a purpose other than that reasonably intended.
3. Warranties
3.1 The liability of the Seller in respect of a breach of a consumer guarantee or any warranty made under these Terms and Conditions for any Goods not of a kind ordinarily acquired for personal, domestic or household use is limited, to the extent permitted by law and at the option of Seller:
in relation to goods, to:
(a) replacing the Goods or the supply of equivalent Goods;
(b) the repair of the Goods;
(c) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
(d) the payment of the cost of having the Goods repaired; and
in relation to services, to:
(a) the supply of the services again; and
(b) the payment of the cost of having the services supplied again.
3.2 To the extent permitted by law, all other warranties whether implied or otherwise, not set out in these Terms and Conditions are excluded and Seller is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the Customer for:
(a) any increased costs or expenses;
(b) any loss of profit, revenue, business, contracts or anticipated savings;
(c) any loss or expense resulting from a claim by a third party; or
(d) any special, indirect or consequential loss or damage of any nature whatsoever.
3.3 Any claims to be made against Seller for short delivery of Goods must be lodged with Seller in writing within 7 days of the delivery date.
3.4 Unless the terms and warranties are included in these standard terms and conditions, all prior discussions, quotations, warranties and Prescribed Terms, to the extent permitted by law, are excluded.
3.5 Where there is any agreement that requires the Seller to indemnify the Customer, the parties agree that the amount claimable from the Seller under such indemnity is limited to the amount that would otherwise be recoverable from the Seller's insurer were such indemnity not in place, less any amount arising out of the wilful criminal acts or negligent acts of the Customer, an employee or agent of the Customer or relevant public health authority.
4. Delivery
4.1 The times quoted for delivery are estimates only and Seller accepts no liability for failure or delay in delivery of Goods. The Customer is not relieved of any obligation to accept or pay for Goods by reason of any delay in delivery. Goods may be delivered by instalments at the discretion of Seller.
4.2 Risk in the Goods passes on delivery to the Customer.
4.3 Unless otherwise agreed, delivery shall be deemed to have taken place:
(a) if the Goods are to be collected from the Seller's premises, then:
(i) just prior to the Goods being loaded onto the carrier organised by the Customer; or
(ii) at the time and date when the Goods are scheduled to be collected by the Customer,
whichever occurs first; or
(b) if the Goods are to be delivered to Customer's address as nominated by the Customer on the order, then just prior to the Goods being unloaded from the carrier at the nominated address in accordance with the order, which order is delivered to the Customer at the Customer's expense.
- 4.4 Signature of any delivery note by any agent, employee or representative of the Buyer or where delivery is to any independent carrier, by such carrier or its agent, shall be conclusive proof of delivery.
4.5 All Additional Charges are payable by the Customer in addition to the Purchase Price of the Goods.
4.6 Return of Goods will not be accepted by Seller except by prior agreement in writing with Seller. Any Goods returned will be subject to a restocking charge of 10% of the Purchase Price of those Goods.
5. Price and Payment
5.1 The Customer must pay the Purchase Price and the Additional Charges to Seller prior to delivery unless otherwise agreed to by the Seller.
5.2 If the Customer is in default, Seller may at its option withhold further deliveries or cancel a contract without prejudice to any of its existing rights.
5.3 Where the Seller has agreed to payment after delivery, all payments are due within 7 days of the date of invoice. The Customer is liable to pay interest at the rate equal to the Commonwealth Bank of Australia overdraft rate plus 2% on all outstanding amounts calculated from the due date of payment until full payment is received by the Seller.
5.4 If the Customer is in default, the Customer agrees to pay the Seller all costs and disbursements including legal costs on a solicitor and own client basis incurred by the Seller in collecting or attempting to recover money outstanding.
5.5 The cost of any special packing and packing materials used in relation to the Goods are at the Customer's expense notwithstanding that the quotation did not include such costs.
5.6 Where the Seller has agreed to provide an order to the Customer's custom specifications, the Customer must pay to the Seller a deposit of 50% prior to delivery. If the Customer is in breach of these Terms and Conditions or cancels or refuses to take delivery of the customised Goods, the deposit is forfeited and the Customer agrees it will not make any claims to recover the deposit.
6. Retention of Title
6.1 Ownership in and title to the Goods remains with Seller until payment in full for the Goods and all sums due and owing by the Customer to Seller on any account has been made. Until the date of payment:
6.1.1 the Customer has the right to sell the Goods in the ordinary course of business;
6.1.2 until the Goods have been sold by the Customer in the ordinary course of the Customer's business, the Customer holds the Goods as bailee for Seller;
6.1.3 the Goods are always at the risk of the Customer.
6.2 The Customer is deemed to be in default immediately upon the happening of any of the following events:
6.2.1 if any payment to Seller is not made promptly before the due date for payment;
6.2.2 if the Customer ceases to carry on business or stops or suspends payment or states its intention of so doing or is unable to pay its debts as they fall due or if any cheque or bill of exchange drawn by the Customer payable to Seller is dishonoured;
6.3 In the event of a default by the Customer, then without prejudice to any other rights which Seller may have at law or under this contract:
6.3.1 Seller or its agents may without notice to the Customer enter the Customer's premises or any premises under the control of the Customer for the purposes of recovering the Goods.
6.3.2 Seller may recover and resell the Goods;
6.3.3 if the Goods cannot be distinguished from similar Goods which the Customer has or claims to have paid for in full, Seller may in its absolute discretion seize all goods matching the description of the Goods and hold same for a reasonable period so that the respective claims of Seller and the Customer may be ascertained. Seller must promptly return to the Customer any goods the property of the Customer and Seller is in no way liable or responsible for any loss or damage to the Goods or for any loss, damage or destruction to the Customer's business howsoever arising from the seizure of the Goods.
6.3.4 In the event that the Customer uses the Goods in some manufacturing or construction process of its own or some third party, then the Customer must hold such part of the proceeds of sale of such manufacturing or construction process as relates to the Goods in trust for Seller. Such part will be an amount equal in dollar terms to the amount owing by the Customer to the Seller at the time of the receipt of such proceeds. The Customer will pay Seller such funds held in trust upon the demand of Seller.
7. Personal Properties Securities Act 2009 ("PPSA")
7.1 Defined terms in this clause that are not defined in these Terms and Conditions have the same meaning as given to them in the PPSA.
7.2 Seller and Customer acknowledge that these Terms and Conditions constitute a Security Agreement and give rise to a Purchase Money Security Interest ("PMSI") in favour of Seller over the Goods supplied or to be supplied to the Customer as Grantor pursuant to the Terms and Conditions.
7.3 The Goods supplied or to be supplied under these Terms and Conditions fall within the PPSA classification of "Other Goods" acquired by the Customer pursuant to these Terms and Conditions.
7.4 Seller and the Customer acknowledge that Seller, as Secured Party, is entitled to register its interest in the Goods supplied or to be supplied to the Customer as Grantor under the Terms and Conditions on the PPSA Register as Collateral.
7.5 To the extent permissible at law, the Customer:
7.5.1 waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Customer, as Grantor, to Seller.
7.5.2 agrees to indemnify Seller on demand for all costs and expenses, including legal costs and expenses on a solicitor / client basis, associated with the:
7.5.2.1 registration or amendment or discharge of any Financing Statement registered by or on behalf of Seller; and
7.5.2.2 enforcement or attempted enforcement of any Security Interest granted to Seller by the Customer.
7.5.3 agrees that nothing in sections 130 and 143 of the PPSA will apply to the Terms and Conditions or the Security under the Terms and Conditions;
7.5.4 agrees to waive its right to do any of the following under the PPSA:
7.5.4.1 receive notice of removal of an Accession under section 95;
7.5.4.2 receive notice of an intention to seize Collateral under section 123;
7.5.4.3 object to the purchase of the Collateral by the Secured Party under section 129;
7.5.4.4 receive notice of disposal of Collateral under section 130;
7.5.4.5 receive a Statement of Account if there is no disposal under section 132(4);
7.5.4.6 receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.
7.5.4.7 receive notice of retention of Collateral under section 135;
7.5.4.8 redeem the Collateral under section 142; and
7.5.4.9 reinstate the Security Agreement under section 143.
7.6 All payments received from the Customer must be applied in accordance with section 14(6)(c) of the PPSA.
8. Drawings and Performance
8.1 Specifications, drawings and particulars of weights and dimensions provided by the Customer are subject to the accuracy of the information provided. The Customer acknowledges that the Seller may deviate from the specifications provided by the Customer if the Seller believes it is reasonably necessary to do so and any such deviation does not vitiate any contract with the Seller or form grounds for any claim against the Seller by the Customer.
8.2 The descriptions, illustrations and performances contained in the Seller's catalogues, price lists and other advertising material do not form part of the contract of sale of the Goods.
8.3 Where specifications, drawings or other particulars are supplied by the Customer, the Seller's quotation is made on estimates of quantities required. If there are any adjustments in quantities above or below the quantities estimated by Seller and set out in a quotation, then any such increase or decrease are to be adjusted on a unit rate basis according to unit prices set out in any attached document or in the quotation.
8.4 Any performance figures given by the Seller are estimates only. The Seller is not liable for loss or damage resulting from failure of the Goods to attain such figures unless specifically guaranteed in writing by the Seller.
9. Insurance
9.1 Pending full payment for the Goods, the Customer must insure the Goods for their full insurable or replacement value (whichever is higher) with an insurer licensed or authorised to conduct the business of insurance in the place where the Customer carries on business.
10. Force Majeure
10.1 The Seller is not liable for any delay or any breach or default under these Terms and Conditions due to any act of God, labour dispute, difficulty in procuring materials, accidents, legislative restrictions or other act whatsoever (where similar or not to the foregoing) beyond the Seller's reasonable control.
11. General
11.1 These terms and conditions are to be construed in accordance with the laws from time to time in the State of New South Wales and the Commonwealth of Australia.
11.2 These standard trading conditions contain all of the terms and conditions of the contract between the parties and may only be varied by agreement in writing between the parties.
11.3 Any conditions found to be void, unenforceable or illegal may, to that extent be severed from the Agreement.
11.4 No waiver of any of these terms and conditions or failure to exercise a right or remedy by Seller will be considered to imply or constitute a further waiver by Seller of the same or any other term, condition, right or remedy.

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