

(Effective on and from 1 February 2020)

## 1. DEFINITIONS

In these Terms the following words and phrases have the following meanings:

**"Community Pharmacy"** has the meaning given in the National Health Act 1953 (Cth).

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

**"CSO Distributor"** has the meaning given in The Operational Arrangements of the Community Service Obligation (CSO) Funding Pool (January 2009).

**"CSO Obligation"** has the meaning given in clause 2.1.

**"Data Privacy Legislation"** means all applicable data protection or data privacy laws in Australia from time to time, including, but not limited to, the Privacy Act 1988 (Cth), the Spam Act 2003 (Cth) and State and Territory based health records legislation.

**"Discounts or Incentives"** are written offers to provide Goods and/or Services on terms or in a way that has been accepted to by you.

**"Force Majeure Event"** means any act, event or circumstance, other than a lack of funds:

- (i) as a direct or indirect result of which, the party relying on it is prevented from or delayed in performing any of its obligations under these Terms; and
- (ii) that is beyond the reasonable control of that party.

**"Forward Charge"** means where we allow you additional time to pay for Goods.

**"Goods"** means any goods supplied or to be supplied by us to you on these Terms.

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

**"GST Act"** means the A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended from time to time.

**"Insolvency Event"** means any one or more of the following events or circumstances occurring in relation to you:

- (i) the commission of an act of bankruptcy as defined in the Bankruptcy Act 1966 (Cth);
- (ii) being in liquidation or provisional liquidation or under administration;
- (iii) having a controller (as defined in the Corporations Act) or analogous person appointed to you or any of your property;
- (iv) being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (v) being unable to pay debts as and when they fall due;
- (vi) becoming an insolvent under administration, as defined in section 9 of the Corporations Act;
- (vii) entering into a compromise or arrangement with, or assignment for the benefit of, any of your members or creditors; and
- (viii) any analogous event or circumstance under the laws of any jurisdiction.

**"Order"** means an order for Goods and/or Services.

**"Services"** means any services supplied or to be supplied by us to you on these Terms.

**"PBS"** means the Pharmaceutical Benefits Scheme as defined by the National Health Act 1953 (Cth).

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

**"Terms"** means these standard trading terms.

**"we"** means Healthcare Supply Partners Pty Ltd ABN 31 631 884 609 trading as Healthcare Logistics ("us" and "our" have corresponding meanings).

**"Winkel"** means the Healthcare Logistics online portal.

**"you"** means a party requesting supply of Goods and/or Services.

## 2. FORMATION OF CONTRACT AND EXCLUSIVITY OF CONDITIONS

2.1 Nothing in these Terms and nothing in our policies changes any obligation that our related bodies corporate have as an approved CSO Distributor under its Deed of Agreement with the Commonwealth of Australia to access the Community Service Obligation Funding Pool ("CSO Obligation"). Where the CSO Obligation applies, any inconsistent parts in these Terms and our policies do not apply. The CSO Compliance Requirements and Service Standards are available at the Department of Health website:

<http://www.health.gov.au/internet/main/publishing.nsf/Content/community-service-obligation-funding-pool>.

2.2 You acknowledge that each and every Order submitted to us:

- (a) is a separate offer all or part of which we may accept or reject at our absolute discretion; and
- (b) to the extent accepted by us, gives rise to a binding agreement between you and us for the supply of Goods and/or Services on these Terms ("**Contract**").

2.3 These Terms replace any other terms previously in force between you and us, subject to any specific written agreement between you and us.

2.4 We may vary these Terms between Orders by notice to you, which may be electronic or otherwise. Electronic notice may be given by posting the varied Terms on Winkel and on our website in which case the variations take effect on posting. The varied Terms will only apply to Orders made after those variations have been notified. Your continued purchase of Goods and/or Services after such notification constitutes acceptance and will evidence your consent to the provision of those Goods and/or Services on these Terms as varied. Where separate Discounts or Incentives are offered, they incorporate these Terms.

## 3. ORDERS

3.1 You must order the Goods from us by submitting an Order to us.

3.2 Once submitted, an Order cannot be cancelled, or Delivery deferred, without our consent.

3.3 We are not bound by an Order except to the extent we accept an Order, either by notifying you of that acceptance or by commencing performance of the accepted part of the Order.

3.4 To the fullest extent permitted by law, we are not obliged to accept any Order.

#### 4. WARRANTIES

4.1 You warrant that you or the person making an Order on your behalf has sufficient power and authority to enter into a Contract with us on these Terms.

4.2 You warrant that no statement or representation made by you or on your behalf to us prior to entering into any Contract with us is misleading or deceptive in any respect, and you warrant that you will be truthful and accurate in your dealings with us.

4.3 You warrant that you will, as soon as practicable, notify us of any event including any pending or threatened event that could have an adverse effect on your ability to perform your obligations under a Contract.

4.4 Any application for credit by you will be on our Trade Account Application form ("**Application Form**"). You warrant that the contents of the Application Form are true and correct and you acknowledge that we rely upon its contents.

#### 5. OUR FEES AND POLICIES

5.1 We reserve the right to charge service fees from time to time in the amounts and on the conditions posted on Winkel or our website from time to time.

5.2 Any:

- (a) Goods returned to us must be returned in accordance with our relevant policy;
- (b) Goods which are dated or expired may only be returned to us in accordance with our relevant policy;
- (c) claims for price adjustments must be done in accordance with the relevant policy;

or as otherwise notified to you or posted on Winkel or our website from time to time. Any variations to our policies will only apply to Orders made after those varied policies have been provided or made available to you.

5.3 You agree that the policies referred to in this clause 5 form part of the Terms.

#### 6. OUR PRICES

6.1 Goods and/or Services are supplied at the price current on the date that your Order is confirmed by us or as displayed on Winkel. The prices for Goods and/or Services are subject to alteration without notice. It is our intention to maintain the prices shown for 24 hours. However, late notification of price changes is common in the pharmaceutical industry and it is sometimes necessary to alter prices within a 24 hour period. We may agree to discount these prices or provide rebates, incentives or other allowances to you at our discretion.

6.2 Unless otherwise stated in writing, all prices quoted are exclusive of GST, which must be added to the price and be paid by you if GST is applicable. Where we have indicated a product's tax status (based on our assumption that you will sell that product without a prescription to an individual), it is an indication only and should not be relied upon. It is

your responsibility to determine whether or not GST is payable.

6.3 Any suggested or recommended prices provided by us or, on our invoice, or our other publications are indicative only and carry no obligation for you to comply with that suggestion or recommendation.

#### 7. DELIVERY OF GOODS

7.1 Delivery of Goods is to the location identified as the delivery address listed on your Application Form ("**Delivery**"), unless otherwise specified in writing. ("Deliver" and "Delivered" have corresponding meanings.)

7.2 You acknowledge that any Delivery times provided by us to you are estimates only.

7.3 We are not liable for any loss, damage or delay suffered by you or any third party arising out of late Delivery or non-Delivery of Goods, except to the extent it is directly caused by our negligence or wilful breach.

7.4 We reserve the right to make part Deliveries of any Order and each part Delivery constitutes a separate Contract upon these Terms.

7.5 You acknowledge that by accepting Delivery, you represent that the Delivered Goods have been received in accordance with the requirements of:

- (a) the *Therapeutic Goods Act 1989* (Cth) and any associated regulations, if applicable; and
- (b) any state or territory law, regulation, code of practice or other subordinate legislation regarding transport, delivery and storage of the Goods.

#### 8. PAYMENT

8.1 You must pay:

- (a) the agreed charges in respect of each item of Goods and each Service supplied by us;
- (b) all other charges agreed between you and us from time to time;
- (c) any applicable stamp or other duties; and
- (d) any other amounts owing under these Terms, without deduction or set-off, to us within the relevant timeframe set out in this clause 8.

8.2 If you pay any of our invoices by way of credit card we are entitled to require you to reimburse us for any fees incurred by us or deducted from the payment to us.

8.3 Unless we expressly agree to the contrary in writing, if one or more invoices are outstanding, all of the proceeds of any payment made by you (or on your behalf) shall be allocated and credited firstly to any late payment fees accrued on any outstanding invoices, secondly to the oldest invoice outstanding and then to each more recent invoice (in order from the oldest to the most recent) until all invoices are paid in full.

8.4 If we agree to supply Goods and/or Services to you on credit the following terms apply:

- (a) Unless another date is indicated on your statement or otherwise agreed by us and subject to 8.4(b), your payments will be due by the 25<sup>th</sup> day of each month following the month in which the Services are provided and/or the Goods are Delivered to the

- location identified as the delivery address on your Application Form.
- (b) If your statements are fortnightly statements, your payments will be due by the earlier of the statement due date or the following:
- (i) fortnightly statements dated 1<sup>st</sup> to the 15<sup>th</sup> of each month are due for payment by the last day of that month; and
  - (ii) fortnightly statements dated from the 16<sup>th</sup> to the end of the month are due for payment by the 15<sup>th</sup> day of the next month.
- (c) In relation to clauses 8.4(a) and 8.4(b):
- (i) no Discounts or Incentives will apply to payments made after the due date; and
  - (ii) where the due date falls on a day that is not a business day, payments are due the prior business day.
- 8.5 You have not paid our invoice for the supply of Goods and/or Services to you ("**Invoice**") until the entire amount due to us under that Invoice has been received by our bank in immediately available funds.
- 8.6 If you object to any item or calculation on an Invoice, you must:
- (a) notify us of your objection in accordance with our relevant policies and;
  - (b) pay the full amount of the Invoice less the disputed amount by the due date.
- If you fail to give notice by the prescribed time and using the prescribed method as set out in our price adjustment policy from time to time, you are deemed to have accepted the contents of the Invoice as being true and correct.
- 8.7 If you want us to reconsider our response after you have made your objection in accordance with clause 8.6, you must escalate your objection by providing written notice (this includes email notice) to your state's credit manager within 14 days of receiving our original response.
- 8.8 We may take any objection made in accordance with clause 8.6 into account in a subsequent Invoice to you. Payment of subsequent Invoices from us incorporating any adjustments by us resulting from an objection constitutes a final determination of the objection as between you and us.
- 8.9 You agree that a certificate given by us, which is signed by a person employed by us whose title includes the word "manager" or by our authorised representative or by our legal advisors, in the absence of any manifest error is sufficient evidence of the facts and matters stated in that certificate, including any amount you owe to us, and you agree that such a certificate may be produced by us to a court or any other person for the purpose of any court proceeding or any other purpose concerning a Contract or these Terms.
- 9. GST**
- 9.1 In this clause 9:
- (a) the expressions Consideration, Input Tax Credit, Recipient, Supply, Tax Invoice and Taxable Supply
- have the meanings given to those expressions in the GST Act; and
- (b) Supplier means any party treated by the GST Act as making a Supply under a Contract.
- 9.2 Unless otherwise expressly stated, all prices or other sums payable or Consideration to be provided under or in accordance with these Terms are exclusive of GST.
- 9.3 If GST is imposed on any Supply made under or in accordance with these Terms, the Recipient of the Taxable Supply must pay to the Supplier an additional amount equal to the GST payable on or for the Taxable Supply, subject to the Recipient receiving a valid Tax Invoice in respect of the Supply.
- 9.4 Payment of the additional amount must be made at the same time and in the same way as payment for the Taxable Supply required to be made in accordance with these Terms.
- 10. ACCOUNT LIMIT**
- 10.1 Normally, we allow you to purchase and continue to purchase Goods as long as the total of your account including the cost of Services we provide (if any) does not exceed your pre-approved account limit (if applicable).
- 10.2 We may require further trade references or reports from you from time to time and additional information if you apply to increase your account limit.
- 10.3 We may increase or decrease your account limit at our absolute discretion without notice to you.
- 10.4 You agree that you will, on our request, also provide us further supporting documentation for the purpose of assessing your credit worthiness.
- 10.5 In no circumstances are we obliged to approve any application for an increase in the limit of your account and we are not obliged to give you reasons for our decision.
- 10.6 Without limiting clause 3.4, you acknowledge that we may refuse to accept an Order if we have reasonable concerns regarding your creditworthiness.
- 11. ALL CONTRACTS**
- 11.1 Where you are a company, we reserve the right to require a guarantee and indemnity (in a form and for an amount satisfactory to us) from the directors of the company. Such guarantee and indemnity is to be current for the period of time during which we accept Orders from you. In any event if you are not a company we reserve the right to require a guarantee and indemnity from an acceptable person.
- 11.2 If an amount is payable by us to you under a Contract, or under any other account, arrangement or agreement between you and us, we are entitled to set off that amount against any amount you owe us under another Contract or under any other account, arrangement or agreement where the parties to the Contracts or accounts are the same.
- 11.3 We may register any security interest in connection with these Terms for the purposes of the PPSA (including a security interest under a Contract) for whatever class or classes of collateral we think fit. You consent to any registration by us and may not make an amendment demand. You must do anything (such as obtaining

- consents, signing and producing receipts and documents, getting documents completed and signed and supplying information) which we ask and consider necessary for the purposes of ensuring that each such security interest is enforceable, perfected and otherwise effective.
- 11.4 In relation to any security interest in connection with these Terms:
- (a) we need not give any notice under the PPSA (including a notice of a verification statement) in relation to a security interest in connection with these Terms unless the notice is required by the PPSA and cannot be excluded;
  - (b) we need not comply with any of the provisions of the PPSA that would otherwise apply to the extent the law permits them to be excluded; and
  - (c) you may not exercise rights under sections 142 (redemption of collateral) or 143 (reinstatement of security interest) of the PPSA to the extent the law permits them to be excluded.
- 11.5 Everything you are required to do under clauses 11.2 and 11.4 is at your expense. You agree to pay or reimburse our costs in connection with anything you are required to do under clauses 11.2 and 11.4.
- 12. DEFAULT**
- 12.1 In the event that:
- (a) there is a breach by you of any of these Terms;
  - (b) any moneys payable to us become overdue, or in our reasonable opinion you will be unable to meet your payments as they fall due;
  - (c) you are subject to an Insolvency Event;
- then we may, without prejudice to our other remedies under these Terms or at law and without notice to you,
- (d) cancel all or any part of any Contract which remains unperformed;
  - (e) require that all amounts owing to us, whether or not due for payment immediately, be paid;
  - (f) cancel any rebates given to you and recalculate the outstanding Invoices on our standard prices;
  - (g) continue with a Contract and recover all amounts outstanding under that Contract and damages suffered by or as a consequence of your failure to perform your obligations under that Contract;
  - (h) suspend all future Deliveries until all outstanding Invoices are paid;
  - (i) suspend credit terms and credit account facilities for any period that we deem necessary or permanently cancel them;
  - (j) charge you late payment fees on any moneys unpaid on the due date in accordance with the rate published from time to time from the due date until you pay the amount in full;
  - (k) demand immediate settlement of credit accounts, Forward Charge amounts, outstanding late payment fees or other amounts;
  - (l) terminate a Contract in accordance with clause 16 and require payment in full for all Goods and/or
- Services supplied up to the date of termination, or require the return of those Goods, at our election;
- (m) suspend your account for any period that we deem necessary or permanently cancel it; and
  - (n) where you have more than one Contract or account with us for which you are liable (including any Contract or account for which you are jointly and/or severally liable):
    - (i) transfer overdue amounts owing on one Contract or account to any other Contract or account; and
    - (ii) take any of the steps specified in clauses 12.1(d)-(n) (inclusive) in respect of any other Contract or account.
- 12.2 You will indemnify us for all costs (including legal costs on a full indemnity basis), charges, commissions, fees and disbursements incurred by us in recovery of any unpaid account, including charges for any dishonoured cheques received.
- 12.3 If you owe us money in relation to any Contract, we reserve the right to change or withdraw any Discounts or Incentives, and/or to remove any credit facilities provided to you under any other Contract you may have with us.
- 13. INSPECTION, INSURANCE AND RECORD-KEEPING**
- 13.1 You must inspect the Goods provided by us immediately upon Delivery, and notify us as soon as is practicable of any discrepancy between the Goods Delivered and the Invoice. You acknowledge that you must notify us of any discrepancy in accordance with the timeframes set out in the relevant policy from time to time.
- 13.2 You are responsible for insuring the Goods from Delivery, and are responsible for maintaining such insurance until you have paid for the Goods in full.
- 13.3 You must comply with all state and territory laws relating to:
- (a) record-keeping, storage and any other matters relating to the Goods, including without limitation, those applying to dangerous Goods and temperature-sensitive Goods from the time that they are Delivered;
  - (b) any limitations on your ability to deal with the Goods supplied (including limitations on your ability to export or resupply Goods); and
  - (c) any limitations on the types of Goods and/or Services that your business may offer.
- 13.4 You will not supply the Goods outside Australia without our prior written agreement.
- 14. RISK AND TITLE**
- 14.1 Goods supplied by us to you are at your risk immediately on Delivery.
- 14.2 Save for any Goods returned to us in accordance with our relevant policy, or any short Delivery notified to us in accordance with our relevant policy, all other Goods identified on the Invoice are deemed to have been accepted by you "as is" upon Delivery.
- 14.3 Proper title to Goods supplied by us to you under a Contract does not pass to you until all Goods supplied by us under



- any Contract have been paid for in full as identified in clause 8.5.
- 14.4 Where you do not make payment in respect of all Goods supplied under any Contract, we can elect to treat any payment as having been made first in respect of Goods which have passed out of your possession.
- 14.5 For the purposes of identification of different shipments of Goods purchased from us and receipt of payment, you agree that the principle of "Last in, First Out" shall be applied to any items that cannot be distinguished.
- 14.6 Until all Goods have been paid for in full:
- (a) you must store Goods separately and in such manner as to show clearly that they are not your property and are property of the owner, whether the owner is us or another;
  - (b) you may, unless you have failed to make payment in respect of any Goods when due or an Insolvency Event occurs, sell Goods, in the ordinary course of your business, as the owner's trustee and must hold all proceeds of sale on trust for the owner and must keep the proceeds separately;
  - (c) you authorise us (and our representatives) to enter any premises (at any time, whether or not monies are immediately due and payable under these Terms) upon which Goods are stored to enable the owner to inspect Goods, to reclaim possession of Goods, and to sell or otherwise dispose of the Goods in any way and on any terms (including price) that the owner chooses, and you warrant that the landlord of those premises (if applicable) has provided consent to such access. These rights are in addition to any rights we may have under Chapter 4 of the PPSA;
  - (d) we have a security interest (for the purposes of the PPSA) in the Goods and any proceeds until title passes to you in accordance with clause 14.3. This security interest secures all moneys owing by you to us under these Terms and each Contract in connection with the Goods. Each security interest is a "purchase money security interest" under the PPSA to the extent that it secures payment of the amounts owing in relation to the Goods;
  - (e) the security interest arising under this clause 14.6 attaches to the Goods when you obtain possession of the Goods and the parties to the Contract confirm that they have not agreed that any security interest arising under this clause 14.6 attaches at any later time.
- 14.7 If you sell or otherwise dispose of the Goods supplied by us before title to them has passed from us to you:
- (a) that part of the proceeds of any sale or dealing as is equal to the amount outstanding to us or, if the proceeds of sale or dealing are less than the amount outstanding to us, the whole of the proceeds of sale or dealing (in either case, our Entitlement) must be held by you in a separate identifiable account on trust for us and must not be mixed with any other moneys held by you; and
  - (b) you must account to us for our Entitlement, until all your liabilities to us have been discharged.
- 14.8 You have no right to sell the Goods or deal with the Goods if:
- (a) an Insolvency Event occurs in relation to you or a guarantor of your obligations under these Terms or a Contract; or
  - (b) you are in breach of these Terms or a Contract.
- 14.9 You indemnify and must keep us indemnified against all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis) that may be brought against us or which we may pay, sustain or incur as a direct or indirect result of the exercise by us of our rights under this clause 14, except to the extent it is caused by our negligence or wilful breach of these Terms.
- 15. CLOSURE OF ACCOUNT/ CHANGE OF BUSINESS / SALE OF BUSINESS**
- 15.1 You must notify us in writing and provide us with any information or documents that we reasonably require, no less than 14 days before a proposed change of ownership, change of business structure, incorporation, change of business name or business premises or closing your account with us.
- 15.2 If providing us with information in accordance with clause 15.1 means that you will disclose third party information, you must provide third party written consent to that disclosure at the time of information provision.
- 15.3 You indemnify us against any losses incurred by us due to change of ownership, change of business structure, incorporation, partnership or change of name or business premises.
- 15.4 If you do not comply with clause 15.1, you will be liable for any losses incurred due to the events set out in that clause, including, without limitation, any charges made by someone other than you operating at your last-notified business premises after account closure until the time that you notify us of the closure.
- 15.5 You will make immediate payment of all outstanding moneys, including current and Forward Charged amounts, upon closure of the account, change of business premises or sale of the business.
- 16. TERM AND TERMINATION OF A CONTRACT**
- 16.1 A Contract commences upon our acceptance of an Order, in accordance with clause 2.2(b) and expires 7 days after the date of payment for the Order.
- 16.2 We may terminate a Contract:
- (a) at any time upon 14 days' notice, at our sole discretion;
  - (b) if you breach any provision of a Contract and fail to remedy the breach within 7 days of receiving written notice from us requiring you to do so; or
  - (c) immediately if an Insolvency Event occurs.
- 16.3 On termination of a Contract under clause 16.2(b) and 16.2(c), all amounts owing to us on any account (whether

- the due dates have passed or not) become immediately due and payable.
- 16.4 On termination of a Contract under clause 16.2(b) and 16.2(c), all Orders (whether or not accepted by us at the time of termination) will be automatically cancelled, except to the extent otherwise directed in writing by us.
- 16.5 On termination of a Contract under clause 16.2(a) we retain rights against you in respect of any past breach, in addition to any other rights, powers or remedies provided by law.
- 16.6 All indemnities in a Contract are continuing and will not be released by our neglect or forbearance or by a Contract being terminated or otherwise ceasing to operate.
- 16.7 We will not be liable to you for any claims by you for any loss and damage for, or on account of, or arising from, any termination of a Contract under this clause 16 or for any suspension, withholding or retention by us in accordance with clause 12.1, except to the extent it is caused by our negligence or wilful breach.
- 16.8 Time is of the essence to these Terms.
- 17. LIMITATION OF LIABILITY**
- 17.1 To the maximum extent permitted by law and subject to clauses 17.2 and 17.3:
- (a) We exclude all conditions and warranties expressed or implied whether by statute, the common law, equity trade custom, or usage or otherwise howsoever.
  - (b) We are not liable to you for any loss, damage, liability, expense, injury or death sustained or incurred by you or any other party, including without limitation any loss of profits, or economic, special, indirect or consequential loss or damage the supply, performance or use of any Goods or out of any breach by us under any Contract incorporating these Terms, even if notified of the possibility of that potential loss or damage, except to the extent it is caused by our negligence or wilful breach.
  - (c) Where liability cannot be excluded, we limit liability to the resupply (or at our election, paying for the cost of resupply) of the relevant Goods and/or Services.
  - (d) We accept no liability in relation to or on behalf of third parties, including liability to your customers or liability for the manufacturers of Goods.
  - (e) If despite clauses 17.1(a), (b), (c) and (d), we are held or found to be liable to you for any matter relating to or arising in connection with a Contract, whether based on an action or claim in contract, tort or otherwise, the amount of damages that you will be entitled to recover from us will be limited to the amount paid by you.
- 17.2 Pursuant to the Australian Consumer Law (the **ACL**) (being Schedule 2 to the Competition and Consumer Act 2010 (Cth)):
- (a) our Goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure;
- (b) this clause applies in respect of the Goods or Services offered and/or provided by us in connection with a Contract which are not of a kind ordinarily acquired for personal, domestic or household use or consumption;
  - (c) pursuant to section 64A, our liability for a failure to comply with a guarantee that applies under Division 1 of Part 3-2 in respect of Goods and Services to which this clause applies:
    - (i) is limited in the case of Goods (other than a guarantee under section 51, 52 or 53) to any one of the following as determined by us:
      - (A) the replacement of 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 acquiring equivalent Goods; or
      - (D) the payment of the cost of having the Goods repaired; and
    - (ii) is limited in the case of Services, to any one of the following as determined by us:
      - (A) the supplying of the Services again; or
      - (B) the payment of the cost of having the Services supplied again; and
  - (d) our liability to you under section 274 in respect of Goods to which this clause applies is limited in the manner provided for in section 276A; and
  - (e) this clause does not apply if (in the case of clause 17.2(b)) you establish that reliance on it would not be fair and reasonable under section 64A(3) or if (in the case of clause 17.2(c)) you establish under section 276A(2) that it is not fair and reasonable for our liability to be limited.
- 17.3 Nothing in this clause 17 excludes, restricts or modifies the application of any law, the exercise of any right or any liability which cannot, by law, be excluded, restricted or modified or any right to rely on any exclusion or limitation of liability or any defence provided for by any such law.
- 18. DIRECT SUPPLY ARRANGEMENTS**
- From time to time, we may allow a supplier who directly provides you with Goods and/or Services to bill you on our Invoice. You accept responsibility for the amounts debited by us relating to Goods and/or Services supplied by others. You must raise any dispute related to Goods and/or Services provided directly with the direct supplier. Your dispute with a direct supplier will not entitle you to withhold payment to us.
- 19. PRIVACY**
- 19.1 You consent to us collecting your personal information in order to provide you with Services you have requested.

Without this information, we can't provide Services and products under these Terms with you.

19.2 We may contact you with marketing material about us and our related businesses that may interest you. We may disclose your personal information to our related companies and to third parties who provide us with (or help us provide) products and services and to health care information services providers who may use it. We may provide information to our information technology providers in locations outside your state or territory and to locations overseas such as New Zealand, the USA and Canada.

19.3 Except where we may refuse access as permitted by law, you can gain access to the personal information we hold about you. Our privacy policy (available at [www.HCL.com.au](http://www.HCL.com.au)) states how you can seek to access or correct any personal information we hold about you, how to complain about a privacy breach by us and how we will deal with a privacy complaint. You can contact us at [www.HCL.co.au](http://www.HCL.co.au).

## 20. TRUSTS

20.1 This clause applies if you are a trustee and whether or not we have notice of the trust.

20.2 Where you comprise two or more persons and any of those persons is a trustee this clause applies to such trustee.

20.3 You agree that even though you enter into these Terms as trustee of the trust, you also shall be liable personally for the performance and observance of every covenant to be observed and performed by you expressed or implied in these Terms.

20.4 You warrant your complete, valid and unfettered power to enter into these Terms pursuant to the provisions of the trust and warrant that your entry into these Terms is in the due administration of the trust.

20.5 You covenant you have a right of indemnity against the property of the trust and it has not, and in the future will not be, excluded, modified, released, lost or diminished (whether by agreement, breach of trust or otherwise).

20.6 You shall not, without our prior written consent:

- (a) resign or be removed as trustee of the trust or appoint or allow the appointment of a new or additional trustee of the trust;
- (b) amend or revoke any of the terms of the trust;
- (c) vest or distribute the property of the trust or advance or distribute any capital of the trust to a beneficiary or resettle any of the property of the trust;
- (d) permit a beneficiary to have the use, occupation, employment or possession of the property of the trust;
- (e) do or permit or omit to do an act or thing in breach of the trust or which would permit the trustee to be removed as trustee of the trust;
- (f) exercise or permit or allow to be exercised a power to change the vesting date of the trust or provide for an early determination of the trust;

(g) lend any money, give any guarantee or incur any debt other than in the ordinary course of business of the trust; or

(h) pay any of the income of the trust to any beneficiary of the trust if such payment will prejudice or affect your ability to pay all monies due to us.

## 21. MISCELLANEOUS

21.1 You may not assign or otherwise deal with a Contract except with our prior written consent.

21.2 We may assign, otherwise deal or sub-contract the performance of the whole or any part of our obligations under a Contract.

21.3 Our failure to insist upon strict performance of these Terms or any part thereof will not be deemed to be a waiver of any of our rights or remedies under a Contract nor any rights arising out of your subsequent breach or default.

21.4 If any of these Terms are unenforceable, illegal or void then it is severed and the rest of these Terms remain in force.

21.5 Our obligations will be suspended during the time and to the extent that we are prevented from or delayed in complying with those obligations as a result of a Force Majeure Event.

21.6 If we are affected by a Force Majeure Event, we must:

- (a) as soon as reasonably possible after being affected, give you particulars of the Force Majeure Event and the manner in which our performance of our obligations will be prevented or delayed; and
- (b) take reasonable steps to remove, overcome or minimise the effects of the Force Majeure Event, except that we are not obliged to settle a strike, lockout or other labour difficulty.

21.7 You indemnify us against all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis) that may be brought against us or which we may pay, sustain or incur as a direct or indirect result of any one or more of the following:

- (a) any material breach or non-performance of these Terms by you, including any breach of warranty;
- (b) any breach by you of any consumer guarantee, warranty, right or remedy given by you expressly or arising by operation of the Australian Consumer Law or any other applicable law;
- (c) any wrongful, wilful or negligent act or omission by you or by any of your employees, agents or contractors;
- (d) the storage, handling or use of any Goods sold under or in connection with these Terms, except to the extent that the relevant action, claim, proceeding, demand, liability, loss, damage, expense or cost was caused by the wrongful, wilful or negligent act or omission of us or of any of our employees agents or contractors; and
- (e) any injury or loss sustained by any person who is employed or engaged by you as an employee, agent or contractor for the purpose of (among other things)

- the performance by you of your obligations under these Terms and who suffers any injury or loss arising out of or in the course of such employment or engagement.
- 21.8 You will pay to us and all of our expenses including any legal costs (on a full indemnity basis), stamp duties and other expenses payable under these Terms incurred in connection with the enforcement of, or preservation of any rights under these Terms. Such costs, duties and other expenses may be recovered by us from you as a liquidated debt. Any payments received by us from you shall be applied firstly to any legal costs, duties and other expenses, then to late payment fees and the remainder to the balance of moneys owed by you.
- 21.9 Service by us of any document will be treated as having been effected when sent to the mail address shown in the Trade Account Application:
- (a) the fax number, by facsimile transmission; or
  - (b) the email address, by email,
- and for the purpose of s13(1) of the *Electronic Transactions Act 2000 (NSW)* and any similar legislation in any other jurisdiction, you agree that in the case of facsimile or email transmission, production by us of a copy of a facsimile transmission or email message bearing the time and date of dispatch shall be conclusive evidence that the facsimile transmission or email message was sent on that date and time shown.
- 21.10 Any agreement, deed, covenant, representation or warranty on the part of two or more persons under or in connection with these Terms or a Contract is for the benefit and responsibility of them jointly and severally.
- 21.11 To the extent that there is any inconsistency between these Terms and any other agreement (including your standard terms), these Terms will prevail.
- 21.12 These Terms prevail to the extent of any inconsistency, over the terms of any Order or Invoice or other arrangement between the parties and displace any contradictory terms or provisions.
- 21.13 These Terms, our Policies, any Contract and any communications we have with you regarding our terms of supply (including without limitation our pricing and Discounts or Incentives) are our confidential information. You or your employees must not disclose this confidential information to any person (except to legal, financial or business advisers for the purpose of seeking advice relating to the terms and conditions), without our prior written consent. You must notify us immediately of any unauthorised use or disclosure of our confidential information. Nothing in this clause prevents you from disclosing our confidential information if you reasonably believe it is required by law (except this paragraph does not permit you to disclose or authorise the disclosure of any information under sections 275(1) and (4) of the PPSA unless section 275(7) of the PPSA applies), as long as you notify us immediately when you become aware that such a disclosure may be required. This obligation of confidentiality will survive expiration or termination of these Terms and will continue until the information ceases to be confidential.
- 21.14 These Terms form the entire agreement on which we are willing to trade with you and all or any previous agreements or understandings we may have had with you are superseded by these Terms.
- 21.15 These Terms and each Contract will be governed by and construed in accordance with the laws of Victoria. The parties submit to the non-exclusive jurisdiction of the Victorian courts and any courts with appellate jurisdiction from the Victorian Courts.
- 21.16 Our privacy policy describes how we manage the collection, disclosure and use of personal information. Our privacy policy, as amended from time to time, forms part of these Terms and is available from the [www.HCL.com.au](http://www.HCL.com.au) website.
- 21.17 References to laws and statutory instruments are references to those laws and instruments as amended or substituted from time to time.