

TERMS & CONDITIONS

Clifford Hallam Healthcare Pty Ltd
(ACN 001 655 554)

11 October 2016



Clifford Hallam Healthcare Pty Ltd Terms & Conditions of Sale

1. TERMS

- 1.1. These terms and conditions (**Terms**) apply whenever Clifford Hallam Healthcare Pty Ltd (ABN 38 001 655 554) (**CH2**) supplies any products or goods (**Products**) to any person or entity (**Customer**), unless expressly agreed otherwise in writing.
- 1.2. By requesting the supply of Products from CH2, the Customer acknowledges and agrees to these Terms. CH2 may vary these Terms at any time by notifying the Customer in writing that it has varied these Terms and directing the Customer to download and read the varied Terms on its website at www.ch2.net.au. The Customer is deemed to have accepted the varied Terms when it is notified by CH2 in this regard and has subsequently submitted a purchase order to CH2 for the purchase of any Product

2. SALE AND PURCHASE

- 2.1. 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.
- 2.2. The Customer cannot cancel any purchase order for Products after issue and is bound to pay the price for those Products, unless CH2 expressly agrees otherwise in writing.
- 2.3. If CH2 and the Customer have entered into a State Government contract, the terms of that contract prevail (if expressly stated) over these Terms to the extent of any inconsistency.

3. PAYMENT

- 3.1. Products are invoiced by CH2 on despatch.
- 3.2. Payment for the Products is due in full, without deduction, withholding or set-off, thirty (30) days from the date of the invoice issued by CH2.
- 3.3. Payment by credit card or debit card will be accepted provided arrangement has been made to do so prior to purchase.
- 3.4. Credit or Charge Cards may not be used to pay accounts that are overdue unless the Customer agrees to pay the merchant fees applicable.
- 3.5. Interest of ten and one half percent (10.5%) may be charged on amounts that are overdue from the due date for payment until payment is made in full.
- 3.6. CH2 may cancel or suspend further delivery of Products to the Customer until full payment of all money due from the Customer to CH2.
- 3.7. CH2 may vary or withdraw credit at its discretion.
- 3.8. The Customer agrees to pay all expenses incurred by CH2 in the recovery of overdue amounts.
- 3.9. The Company may set off any amount owed by a Debtor to the Company against any amount owed to the Debtor by the Company.

4. PRICING

- 4.1. Unless specified on the invoice, all prices are exclusive of the goods and services tax (if any) chargeable under the A New Tax System (Products and Services Tax) Act 1999 (Cth) (GST).
- 4.2. GST is payable by the Customer at the same time as the price for the relevant Products.
- 4.3. Unless otherwise agreed in writing, the price charged for the Products shall be the price applicable at the time of placing the order.
- 4.4. Verbal quotations are not binding on CH2.
- 4.5. Written quotations are only valid for one (1) calendar month unless otherwise stated.
- 4.6. CH2 may vary its prices at any time without notice.
- 4.7. All prices quoted by CH2 include standard packaging for delivery within Australia.

5. ORDERS

- 5.1. Orders for Products must be in units of measure as reflected in the CH2 catalogue (as defined by the Therapeutic Goods Administration and manufacturer's certification for the relevant product).
- 5.2. Orders for catalogue or non-catalogue Products that are not held as a stock line by CH2 and which are ordered on the Customer's request must meet the relevant manufacturer's minimum order quantity for that Product.
- 5.3. If an order is for less than \$200.00 (plus GST) then a \$25.00 (plus GST) handling and freight charge will apply. Unless otherwise agreed with CH2, the Customer will be charged a freight and handling fee.
- 5.4. Orders for Products which are temporarily out of stock will only be placed on backorder at the Customer's express request.
- 5.5. CH2 reserves the right to charge the customer freight and cold chain fees.
- 5.6. CH2 may apply a \$45.00 account holding fee (invoiced on the last day of each month) to certain accounts when the monthly spend with CH2 is less than \$5,000.00.

An account will be exempt from this fee if they are purchasing product belonging to suppliers for whom CH2 is the exclusive 3rd party logistics provider.

An account will be advised in advance if they are subject to this fee.

6. WARRANTY

- 6.1. Except as set out in these Terms or otherwise expressly agreed in writing, all conditions, representations, warranties, terms and undertakings, whether express or implied, are excluded to the maximum extent permitted by law.
- 6.2. CH2 will endeavour to provide the Customer with the benefit of any warranty CH2 receives from the supplier or manufacturer of the Products.
- 6.3. Returns of faulty capital equipment under warranty will be actioned by repair or replacement by/from the manufacturer/supplier.
- 6.4. Only under instruction from the manufacturer/supplier will the price of the Products be

credited.

- 6.5. Non-warranty repairs may be returned for inspection before being passed on to an appropriate repairer should this be found necessary.
- 6.6. No repairs will be carried out directly by CH2.
- 6.7. Repairs will be invoiced at a minimum cost of \$25.00 (plus GST) covering the inspection, handling, and freight of the item.
- 6.8. No guarantee of prompt return can be given by CH2 as the repair is not carried out by CH2, although CH2 will try to minimise any delays.

7. RETURNS

- 7.1. Subject to clause 7.5, if the Products are not the Products ordered by the Customer, or the Products are damaged on arrival these Products may be accepted for return only when a product credit claim has been requested and approved by CH2 Customer Service personnel for those Products (Product Claim).
- 7.2. When applying for a Product Claim, the original invoice number is required to be quoted.
- 7.3. All returned Products are to be properly packed, clearly labeled with the Product Claim number, and returned by CH2's nominated means. Prior to return of any products, the Customer must obtain CH2 Credit Returns advice.
- 7.4. Products being returned must comply with the following conditions:
 - (a) they must be returned using a carrier nominated by CH2;
 - (b) they must be returned with a CH2 credit returns advice (which may be requested from CH2 by calling 1300 720 274) duly completed and signed by the Customer which:
 - (i) itemises the Products being returned and explains the reasons for return;
 - (ii) 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
 - (iii) attaches a copy of the original signed and dated invoice for the returned Products; and
 - (c) the provision of a credit returns advice does not of itself indicate acceptance, approval or authorisation by CH2 for the return of the Products.

7.5. Returns will not be accepted for credit if:

- (a) the Products were delivered more than seven (7) days prior to the request for return;
- (b) the Products returned are incomplete, or have been used;
- (c) the Products are received by CH2 in a damaged or unsaleable condition, or are not in their original unopened packaging;
- (d) the Products were not stored and/or shipped pursuant to the manufacturer's or CH2's recommendations;
- (e) the Products are not normal CH2 stock items and have been procured by CH2 to meet a specific Customer requirement;
- (f) the Products are not returned to CH2's nominated warehouse; and
- (g) the Products are:
 - (i) buy to backorder lines; or

- (ii) 'cold chain' products which are required to be stored between 2 and 8 degrees Celsius; or
 - (iii) nutritional products.
- 7.6. Any claim in relation to Products that have a short shelf life, or are defective or do not correspond with any order, must be made by the Customer to CH2 within seven (7) days of delivery (or in the case of cold chain Products, on the day of delivery) or that claim will be waived and CH2 will not have any liability in respect of such Products.
- 7.7. If the reason for the return was not the fault of CH2 or if the Products are otherwise not entitled to be returned for credit, then a minimum restocking fee of the higher of \$30.00 (plus GST) or ten percent (10%) (plus GST) of the value of the returned Products may apply, together with any other charges (including freight) incurred by CH2 in connection with such return and any handling fee included within the price may not be refunded or credited.
- 7.8. CH2 may, in its absolute discretion, (but is not obliged to) accept returns of Products which the Customer has incorrectly ordered (Product Credit), provided that the Customer requests the Product Credit within seven (7) days after delivery of the product.

8. DELIVERY AND RISK

- 8.1. Risk in the Products shall pass to the Customer immediately upon delivery or, where the Customer is to arrange delivery, when the Products are made available for collection by the Customer.
- 8.2. Any time stated for delivery is an estimate only. CH2 is not liable for any delay in delivery (however caused), nor for any failure to deliver caused by the Customer's failure to provide CH2 with adequate delivery instructions or any other instructions relevant to the supply of the Products. Any such delay or failure does not give the Customer a right to reject the Products.
- 8.3. 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.
- 8.4. Products will be delivered during CH2's normal business hours.
- 8.5. If CH2 agrees to deliver Products outside CH2's normal business hours, the Customer agrees that CH2 may impose an additional delivery and handling charge.
- 8.6. The Products will be delivered using methods and carriers selected by CH2.
- 8.7. If the Customer requests other arrangements, the Products will be transported at the Customer's cost and risk.
- 8.8. Where:
- 8.9. the Customer does not take delivery when the Products are ready; or
- (a) the Customer orders the Products for collection and does not collect the Products within ten (10) business days after the specified collection date,
 - (b) 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 cost and risk.

9. TITLE

- 9.1. The property in 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.

- 9.2. Until such payment in full is made the Customer shall keep the Products for and on behalf of CH2 in its capacity as a fiduciary and subject to these Terms.
- 9.3. 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.
- 9.4. 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.
- 9.5. 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.
- 9.6. This authority to sell and use the Products is revoked immediately if a Customer default occurs (see clause 13) or if CH2 revokes that authority in writing.
- 9.7. The Customer shall ensure that the Products are stored in such a way that they do not become spoilt or damaged, are clearly identifiable as the property of CH2 and are not intermingled with the property of the Customer or of any other person.
- 9.8. 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.
- 9.9. The Customer shall notify CH2 in writing of any intended sale of the Customer's business, which includes or purports to include the Products as part of the Customer's property.
- 9.10. Until payment to CH2 in full, the Customer shall not grant any security interest over, lease, assign or otherwise deal with the Products, except as permitted by these Terms or with the written consent of CH2.
- 9.11. At the time the Customer has control of the Products, the Customer must fully insure the product against loss or damage, ensuring that CH2's interest as owner is noted on the policy.

10. PERSONAL PROPERTY SECURITIES ACT 2009

- 10.1. 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.
- 10.2. 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.
- 10.3. To the maximum extent permitted by applicable law, the parties agree that:
 - (a) the Customer waives any right to receive a verification statement under the PPSA in respect of the security interest created by these Terms; and
 - (b) the Customer waives and, with CH2's agreement contracts out of, the Customer's rights under sections 95, 96, 118, 121(4), 125, 127, 129, 130, 132(3)(d), 132(4), 134(2), 135, 136(5), 137, 142 and 143 of the PPSA.
- 10.4. Terms defined in the PPSA shall have the same meaning when used in this clause.
- 10.5. 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.

- 10.6. 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.
- 10.7. Nothing in this clause will prevent any disclosure by CH2 that it believes is necessary to comply with its other obligations under the PPSA.

11. COMPLIANCE WITH LAWS, REQUIREMENTS AND GUIDELINES

- 11.1. 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.
- 11.2. 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.
- 11.3. 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

12. CANCELLATION AND TERMINATION

- 12.1. The Customer may not cancel any order once lodged with CH2, unless CH2 in its absolute and unfettered discretion agrees in writing.
- 12.2. CH2 will not agree to any cancellation unless the Customer compensates CH2 against all loss or damage arising from the cancellation.
- 12.3. CH2 reserves the right to accept or decline in whole or in part any order. CH2 may discontinue supply of any product without notice, unless otherwise required by legislation.
- 12.4. CH2 may cancel any order and terminate these Terms if:
- 12.5. any invoice due is unpaid; or
- 12.6. the Customer becomes insolvent or CH2 obtains an unfavourable credit report on the Customer's financial standing; in which case, the Customer must indemnify CH2 for any costs and expenses incurred prior to cancellation and must pay any reasonable cancellation charges fixed by CH2. In these circumstances, CH2 may require the Customer to provide prepayments or other security as a condition of CH2 resuming delivery of Products to the Customer.
- 12.7. The Customer has no claim against CH2 for any damage, loss, cost or expense arising from any cancellation by CH2.

13. CUSTOMER DEFAULT

13.1. If:

- (a) the Customer breaches any provision of these Terms (or any other agreement with CH2);
- (b) the Customer suffers any bankruptcy or insolvency event (including the appointment of any liquidator, receiver, administrator or similar officer in respect of the Customer or any of its assets; any resolution is passed, proceedings filed or order made for the liquidation, receivership, administration, bankruptcy, winding-up or dissolution of the Customer; the Customer enters into any compromise or arrangement with its creditors; or any analogous event under the laws of any applicable jurisdiction); or
- (c) any event occurs or information becomes known to CH2 which, in CH2's opinion, might materially affect the Customer's creditworthiness, the value of the Products or the Customer's ability or willingness to comply with its obligations under these Terms (or any other agreement with CH2), then without limiting any other right or remedy CH2 may have, CH2 may at any time without notice:
 - (i) suspend or terminate any or all existing and future contracts with the Customer for the supply of Products and claim damages from the Customer for all losses, including without limitation packaging, storage or transport costs, loss of profits and any reduction in value of the Products;
 - (ii) suspend, cancel or vary any credit terms and require immediate payment of any or all amounts outstanding;
 - (iii) enter on any premises where the Products are located and take possession of and remove the Products; and/or
 - (iv) dispose of the Products in any manner CH2 sees fit.

13.2. 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 a Customer default as described above.

13.3. 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.

13.4. 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.

13.5. 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.

14. PRODUCT ADVICE AND USAGE

14.1. Any description of Products used by CH2 is for identification purposes only and not a description with which the Products must comply.

14.2. The Customer acknowledges and agrees that any representation or advice given by or on behalf of CH2 (or any of its employees or agents) in respect of the operation or use of a product is offered for information purposes only and should not be relied upon.

14.3. CH2 assumes no obligation or liability whatsoever in respect of any such representation or advice and the Customer acknowledges and agrees that it is responsible for advising its customers or patients about the operation, application, appropriateness and use of the

Products.

15. HANDLING

- 15.1. The Customer shall pay the cost of any freight and or handling costs associated with the delivery of bulk items, equipment or furniture.
- 15.2. Customer requests for urgent orders may be subject to additional freight and handling costs.
- 15.3. Cold chain Products may attract additional handling charges, whether or not the Handling Fee Threshold has been met.

16. LIABILITY AND INDEMNITY

- 16.1. 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 repairing or replacing the Products (or supplying equivalent Products) or paying the cost of repairing or replacing the Products or supplying equivalent Products.
- 16.2. 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 whatever, even if due to the negligence of CH2, its employees or agents.
- 16.3. The Customer agrees that the Products are not of a kind ordinarily acquired for personal, domestic or household use or consumption.
- 16.4. 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.

17. FORCE MAJEURE

- 17.1. 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 fire, accident, earthquake, flood, drought, crime, war, blockade, civil commotion, epidemic, strike, lockout or labour dispute, shortage of fuel, power or raw material, inability to procure stock or transport, or acts or omissions by regulatory authorities).

18. PRIVACY

- 18.1. These Terms incorporate the CH2 Privacy Policy which may be found at www.ch2.net.au or by contacting the CH2 Privacy Officer on (03) 9554 0500.

- 18.2. 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 providing credit to the Customer, including the administration and management of the Customer's accounts with CH2; market research; marketing CH2s Products and services (or those of its related companies); and any other purpose relating to these Terms. The Customer authorises CH2 to:
- 18.3. disclose the Customer's personal information to any third party; and
- 18.4. transfer the Customer's personal information to any country, in connection with any of the purposes set out above.
- 18.5. The Customer has a right of access to, and may request correction of, personal information held by CH2 about the Customer.

19. MISCELLANEOUS

- 19.1. 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.
- 19.2. These Terms prevail over any terms in any other CH2 document.
- 19.3. CH2 may vary these Terms from time-to-time by giving the Customer a copy in writing to its last known billing address.
- 19.4. Any variation will be effective from the date specified by CH2 in any written notice provided to the Customer.
- 19.5. By requesting, or continuing to request, any Products after such effective date, the Customer accepts and agrees to be bound by such variation.
- 19.6. Unless CH2 agrees in writing, no waiver, variation or addition to these Terms shall have any effect whatsoever.
- 19.7. The proper law relating to the supply of the Products is the law of the State of New South Wales and the Customer agrees to submit to the exclusive jurisdiction of the Courts of that State.
- 19.8. The Customer expressly agrees to transfer at its cost any proceeding brought in a Court outside the jurisdiction of New South Wales to a Court or Registry in that State.
- 19.9. Nothing contained in these Terms and conditions shall exclude or modify the application of any condition, warranty or liability which is imposed by the provisions of any relevant legislation to the extent to which any such conditions, warranties or liabilities cannot lawfully be excluded.
- 19.10. 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.
- 19.11. CH2 may assign any of its rights and obligations to any person.
- 19.12. The Customer may not assign any of its rights and obligations to any person without the prior written consent of CH2.
- 19.13. The United Nations Convention on Contracts for the International Sale of Products (the Vienna Convention) shall not apply to the sale and purchase of the Products.