



JOHNSON & JOHNSON (NEW ZEALAND) LIMITED

TERMS AND CONDITIONS OF SALE

1. GENERAL

"Contract" means any agreement with Johnson & Johnson Pacific, the Consumer division of Johnson & Johnson (New Zealand) Limited ("JNZ") in relation to the supply of goods to another ("Buyer"). "Order" means any purchase order, request for goods, contract for the provision of goods or other document of a similar nature. "Terms and Conditions" means these terms and conditions of sale.

Unless otherwise agreed in writing between JNZ and the Buyer, these Terms and Conditions govern every Contract. By placing an Order, the Buyer accepts these Terms and Conditions, which prevail despite anything contrary stated in the Buyer's Order or other document or communication.

2. PRICE AND GST

Prices will be those ruling on the date the goods are dispatched. JNZ's price list may change from time to time, effective upon six weeks' written notice to the Buyer. No credit will be granted to the Buyer for goods purchased in the event of a price reduction between the time of dispatch and the time of delivery. Unless otherwise stated, prices are exclusive of GST and any other levies (which will be for the Buyer's account). The Buyer will pay to JNZ an amount equal to any GST or other levies on the supply of the goods at the time payment is due for the goods under clause 6. The Buyer will keep the terms of any Contract confidential.

3. ORDERS

Each Order must be for no less than \$1,000 in full shipper multiples used by JNZ from time to time. Any Orders for part of a shipper will be deemed to be for a full shipper. Orders will be accepted only for quantities equal to or greater than the minimum order quantity set out in JNZ's Price List (under "shipper size") by product unless otherwise agreed. JNZ may discontinue supply of any good without notice unless otherwise required by law. The Buyer agrees to trade electronically with JNZ in the provision of Orders, forecasts and the exchange of data as requested by JNZ from time to time and will work with JNZ on supply chain enhancements. The Buyer must order and stock an agreed range of Johnson & Johnson goods. JNZ is not obliged to accept any Order and will advise the Buyer in writing if it rejects any Order.

4. PACKAGING

JNZ may determine and vary from time to time the packaging to be used for goods supplied.

5. DELIVERY

Unless otherwise agreed, the goods will be transported at JNZ's cost and risk by JNZ's preferred carriers or agents. If the Buyer requests other arrangements, the goods will be transported at the Buyer's cost and risk. Delivery of goods by JNZ to the Buyer's carrier or the Buyer's depot advised by the Buyer to JNZ in writing (whichever occurs first) shall be deemed to be delivery to the Buyer. The goods will be delivered to one depot of the Buyer, unless JNZ agrees otherwise in writing. JNZ will make reasonable efforts to deliver goods on any specific dates requested by the Buyer, or if any of those dates falls on a weekend or public holiday, the first working day after that. JNZ will transport all available goods ordered and may deliver in instalments. JNZ will not be liable to the Buyer for failure to deliver on any specific date. Where the Buyer does not take delivery on the specific date requested by the Buyer or where there is no such date, such other date JNZ is willing to deliver, the purchase price will become immediately payable and JNZ is entitled to store the goods without liability and at the Buyer's cost and risk.

6. PAYMENT

Goods will be invoiced by JNZ on dispatch. Unless goods are expressly sent on C.O.D terms, or other terms are notified by JNZ in writing, invoices are to be paid in full without set-off or deduction no later than the 20th of the month following the date of invoice. If the Buyer fails to pay an amount due: (a) JNZ may charge interest on a daily basis at the rate of the Reserve Bank Official Cash Rate from time to time plus 5% on the overdue amount; (b) all amounts then owing to JNZ under any Contract immediately and automatically become due and payable; (c) JNZ may cancel any Order or withhold further delivery until full payment of all money due from the Buyer to JNZ; (d) JNZ may vary or withdraw credit at its discretion; and (e) the Buyer will, immediately upon demand being made by JNZ, indemnify JNZ from and against all JNZ's costs and disbursements including (without limitation) JNZ's actual solicitor's costs, the actual costs of any receiver appointed by JNZ and all associated costs of credit collection.

7. RISK AND TITLE

Risk and title to goods (including any instalment delivery) passes to the Buyer on delivery to the Buyer, its carrier or agent in accordance with clause 5. The Buyer may sell the goods to a third party in the ordinary course of its business. The Buyer acknowledges and agrees that: (a) these Terms and Conditions constitute a security agreement for the purposes of the Personal Property Securities Act 1999 ("PPSA"); and (b) a security interest is taken in all goods previously supplied by JNZ to the Buyer (if any) and all goods that will be supplied in the future by JNZ to the Buyer during the continuance of the parties' relationship including, without limitation, any commingled or processed goods which incorporate the goods and all proceeds of the goods. The

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Buyer: (a) must give JJNZ not less than fourteen (14) days prior written notice of any proposed change in the Buyer's name and/or any other change in the Buyer's details (including but not limited to, changes in the Buyer's address, facsimile number, or business practice); and (b) not register a financing change statement or a change demand without the prior written consent of JJNZ.

At JJNZ's request, the Buyer will promptly sign and deliver (or cause to be signed and delivered) any thing that JJNZ may require from time to time to give effect to these Terms and Conditions, including without limitation, doing all such things as JJNZ may require in order to ensure that the security interest created under these Terms and Conditions constitutes a first ranking perfected purchase money security interest over the goods. The Buyer waives any right to receive a verification statement under the PPSA. JJNZ and the Buyer agree that nothing in sections 114(1)(a), 117(1)(c), 133 and 134 of the PPSA shall apply to these Terms and Conditions, and the Buyer's rights as debtor in sections 116, 119, 120(2), 121, 125-127, 129 and 131 of the PPSA shall not apply.

8. CLAIMS AND RETURNS

The Buyer shall inspect the goods on delivery and shall within seven days of delivery notify JJNZ of any alleged non-compliance with the relevant Order, shortage in quantity or damage to the goods occurring during transit by JJNZ's carrier. Such notification must include sufficient detail for JJNZ to adequately consider the claim and the Buyer shall provide any further evidence reasonably requested by JJNZ (e.g. photographs of damage). If the Buyer fails to comply with these provisions the goods shall be conclusively presumed to be in accordance with these Terms and Conditions and free from any damage or defect and JJNZ shall not incur any subsequent liability whatsoever in relation to the goods. JJNZ will advise the Buyer within a reasonable time whether or not it accepts the Buyer's claim. For goods that JJNZ has agreed in writing that the Buyer is entitled to reject, JJNZ's liability is limited to repairing/replacing the goods or issuing a credit note (at its option) provided that: (a) the Buyer has complied with the provisions of this clause; (b) the goods are returned at the Buyer's cost within ten days of the delivery date; and (c) the goods are returned in the condition in which they were delivered, with all packaging material intact.

9. SUPPLY FOR BUSINESS PURPOSES

Where the supply of goods is a supply for business purposes, the Buyer agrees that the goods are supplied to the Buyer for business purposes in terms of sections 2 and 43 of the Consumer Guarantees Act 1993 and that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply to the Buyer. Accordingly, in such a case the Buyer is not a "consumer" for the purpose of these Terms and Conditions.

10. RESALE BY BUYER

The Buyer must not make any representation in relation to the goods without JJNZ's prior written approval.

11. SOURCE OF PRODUCTS AND EXPORT PROHIBITION

The Buyer must not obtain Johnson & Johnson goods for distribution or resale in New Zealand from any person, firm or company other than JJNZ. Goods purchased by the Buyer may only be used or resold for use in New Zealand. The Buyer agrees it will not resell the goods to anyone whom it knows or ought to know intends to export the goods. Any breach of this clause will preclude the Buyer from purchasing further products from JJNZ, until JJNZ is satisfied in its sole discretion that the Buyer will not further breach this clause.

12. COMPLIANCE WITH LAW, REGULATION AND GUIDELINES

The Buyer will comply with all laws and JJNZ requirements relating to the purchase, storage, sale or other dealing with the goods including complying with the Fair Trading Act 1986 and Consumer Guarantees Act 1993, all relevant adverse event reporting requirements, Medsafe regulations, the New Zealand Code of Good Manufacturing Practice for Manufacture and Distribution of Therapeutic Goods, and guidelines and information issued by JJNZ from time to time. The Buyer must maintain a suitable place of business and adequate warehouse facilities within New Zealand to allow for the proper and secure storage, segregation, temperature control, handling and transportation of Johnson & Johnson goods, including those goods that may be classified as hazardous materials.

13. SUSPENSION OR RECALL

If the Buyer is directed to assist in any suspension of supply or recall of goods for any reason by JJNZ or any regulatory authority, the Buyer will cooperate and comply with all such reasonable directions of JJNZ or such regulatory authorities. The sole cost and expense of such suspension or recall will be borne by: (a) JJNZ to the extent the costs and expenses are reasonable and necessary where the reason for the suspension or recall is as a result of a fault in the manufacture or labelling of the goods; and (b) by the Buyer where the reason for such suspension or recall is as a result of any act, default, omission or representation of the Buyer or any of its customers.

14. INDEMNITY

The Buyer agrees to indemnify and keep indemnified JJNZ for any cost, expense, damage, liability or loss (direct or indirect) in relation to any act or omission of the Buyer.

15. INTELLECTUAL PROPERTY RIGHTS

The Buyer acknowledges that all intellectual property rights in the goods are the property of JJNZ or its related bodies corporate. The Buyer shall advise JJNZ as soon as practicable if it becomes aware of or suspects any third party is or may be infringing JJNZ's

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intellectual property rights and shall provide JJNZ with all reasonable assistance to investigate and prosecute any potential infringement.

16. WARRANTIES AND LIMITATION OF LIABILITY

To the extent permitted by law, no warranty or condition shall be implied against JJNZ by any statute, at common law or otherwise and no representation, express condition, warranty or variation of these Terms and Conditions shall be binding on JJNZ unless it is in writing and signed for or on behalf of JJNZ. To the extent permitted by law, JJNZ's liability is, at the option of JJNZ, limited to repairing/replacing the goods or issuing a credit note in the manner provided for in clause 8. JJNZ shall have no further liability or responsibility for any direct, indirect or consequential injury, loss or damage (including loss of profit or opportunity) whatsoever and however arising provided that this clause shall not prevent a Buyer who is a "consumer" pursuant to the Consumer Guarantees Act 1993 from exercising any remedies that Buyer may have under the Consumer Guarantees Act 1993.

18. FORCE MAJEURE

If the manufacture or delivery of goods is prevented or hindered directly or indirectly by strike, material/fuel/labour shortage, plant failure, late receipt of the Buyer's Order or other information, or any other cause not in JJNZ's control, then the time for delivery will be extended until a reasonable time after the effect of the delaying cause has ceased. Neither JJNZ nor the Buyer will be entitled to cancel the Contract, nor will JJNZ be liable for damages for the resultant delay.

19. TERMINATION

Without prejudice to any other remedies JJNZ may have, if at any time the Buyer is in breach of any obligation in these Terms and Conditions (including those relating to payment), JJNZ may suspend or terminate the supply of goods to the Buyer and any of its other obligations under these Terms and Conditions. JJNZ will not be liable to the Buyer for any loss or damage the Buyer suffers because JJNZ has exercised its rights under this clause. In the event that: (a) any money payable to JJNZ under these Terms and Conditions (or any other contract between JJNZ and the Buyer) becomes overdue, or in JJNZ's opinion the Buyer will be unable to meet its payments as they fall due; or (b) the Buyer breaches any provision of these Terms and Conditions or any Order; or (c) the Buyer suffers a change of ownership or effective control or a material change in the nature of its business (for which it has not obtained JJNZ's prior written consent); or (d) the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or (e) the Buyer no longer carries on business or threatens to cease carrying on business; or (f) being an individual, the Buyer becomes bankrupt or commits an act of bankruptcy or proceedings are taken for winding-up of the Buyer's affairs; or (g) being a company, the Buyer goes into liquidation or administration (whether voluntary or compulsory) or does anything or fails to do anything which would allow a receiver, manager, administrator or other similar person to be appointed or to take possession of any of the Buyer's assets or which would entitle any person to present an application for winding up or is wound up or dissolved or placed under statutory management or enters into a scheme or arrangement with its creditors or any class thereof; then without prejudice to JJNZ's other remedies at law, JJNZ may (a) cancel all or any part of any Order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies; and/or (b) demand immediate payment of all or any part of any moneys owing (whether or not then due); and/or (c) cancel these Terms and Conditions and seek damages and/or; (d) require the Buyer to pay 5% of the price of the goods ordered but not delivered, being a genuine pre-estimate of liquidated damages; and/or (e) require prepayment or other security as a condition of resuming delivery.

20. VARIATION, WAIVER, AND ASSIGNMENT

JJNZ may amend these Terms and Conditions from time to time by written notice, which shall apply to any Order placed after the date of notification. JJNZ's acceptance of payment, or delay or failure to act will not prejudice its rights or constitute a waiver. The Buyer cannot assign the Contract in whole or part. Any change in the Buyer's ownership or effective control or a material change in the nature of its business shall be deemed an assignment, for which the prior written consent of JJNZ is required. JJNZ may freely assign its rights.

21. GOVERNING LAW AND JURISDICTION

All matters arising in connection with the Contract will be governed by the laws applying in New Zealand. All disputes will be subject to the non-exclusive jurisdiction of the courts of New Zealand.

22. PRIVACY

The Buyer authorises JJNZ to collect, retain and use any information about the Buyer for credit enquiry, marketing purposes or enforcing any rights under these Terms and Conditions.

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