

**BSN MEDICAL LIMITED**  
**TERMS AND CONDITIONS OF SALE – NEW**  
**ZEALAND**  
**Effective from 1 January 2016**

**1. Orders**

1.1 These terms and conditions may be updated by the Company from time to time. The current version of these terms and conditions is available at <http://www.bsnmedical.com.au/products/resources.html>.

1.2 The version of these terms and conditions of sale current at the time an order is placed ('Conditions') apply to the purchase of any goods listed on the Company's current price list that are specified in any order submitted by the Purchaser. A Contract will be formed when such an Order is accepted (with or without agreed modifications) in writing by the Company. The submission of an Order to the Company and the acceptance of the Goods by the Purchaser are both conclusive evidence that these Conditions apply and are binding on the Purchaser. Any terms or conditions proposed by the Purchaser that are different from, or in addition to, these Conditions are expressly rejected by the Company, and will not be binding upon the Company, unless specifically agreed in writing by the Company.

**2. Price and payment**

2.1 The Price of the Goods is exclusive of GST and other taxes and duties. GST and other taxes and duties must be paid by the Purchaser to the Company in addition to the Price.

2.2 The time for payment for the Goods will be as agreed by the Parties in writing. If no time is specifically agreed then payment must be made prior to delivery of the Goods.

2.3 Payment is only received by the Company when it receives cash or when the proceeds of other methods of payment are credited and cleared to the Company's nominated bank account. The Company may set off any amount due and payable by the Company to the Purchaser against any amount due and payable by the Purchaser to the Company.

2.4 If the Price is not paid in full when due, then, without affecting any of the Company's other rights or remedies, the Company may charge interest at 1% compounding monthly on all unpaid amounts, which interest accrues from day to day from and including the due date for payment up to and including the actual date of payment.

**3. Delivery**

3.1 Delivery of the Goods will occur when Goods the subject of an Order (appropriately packaged and addressed to the Purchaser of those Goods) are placed in the collection area of the Company's nominated third party logistics provider ready for collection by a carrier engaged to deliver those Goods to the Purchaser (Delivery). Delivery and dispatch dates quoted are approximate only and the Company is not liable for any delay in the delivery of the Goods.

3.2 If an Order fails to meet the minimum order value of \$NZ300.00 or as specified in the Company's price list at the time the Order is placed (**Minimum Order Value**), then the Purchaser agrees to pay the then current handling fee for the delivery of that Order. If an Order meets the Minimum Order Value then the Company will pay the costs of a carrier engaged by it to deliver the Goods the subject of that Order to an address specified by the Purchaser.

3.3 If the Purchaser fails to take delivery of the Goods or fails to give adequate delivery instructions then, without affecting any of the Company's other rights or remedies, the Company may store the Goods until actual delivery takes place and charge for the reasonable costs (including insurance) of storage. The Company may, after 30 days, sell the Goods at the best price readily obtainable and (after deducting reasonable storage and selling expenses) account for the excess over the Price or charge the Purchaser the amount of any shortfall (which must be paid by the Purchaser within 7 days).

**4. Returns**

4.1 Any claim by the Purchaser relating to Products which is based on any defect in material or workmanship or for non-delivery (whether or not delivery is refused by the Purchaser) must be notified to the Company within ten (10) days from the date of delivery. If no such claim is notified to the Company within this time, the Purchaser is not entitled to reject the Goods and the Purchaser will be bound to pay the Price as if the Goods had been delivered in accordance with the Contract.

4.2 The Purchaser will allow the Company to inspect the Goods within a reasonable time following notification of any suspected defect. If the Purchaser fails to comply with this provision, the Goods will be taken as delivered in accordance with the Contract free from any defect.

4.3 Where the Company accepts that the Goods have a defect in material or workmanship then the Company will

accept the return of those Goods by the Purchaser and upon receipt will credit the Price paid by the Purchaser for those Goods to the Purchaser's account.

4.4 In addition to clause 4.3, the Company may, in its absolute discretion, accept the return of Goods by the Purchaser for any reason. Matters that the Company may consider in exercising its discretion include: whether the Goods are in their original packaging; the expiry date of the Goods; and whether the Goods are otherwise in a saleable condition. If the Company agrees to the return of Goods (other than pursuant to clause 4.3) then the Purchaser must pay a restocking fee of \$50.00 or 15% of the Price of the Goods (whichever is the greater) plus freight and insurance costs incurred in the return of those Goods.

## 5. Risk and title

5.1 Risk of damage to or loss of the Goods passes on Delivery of those Goods. The Purchaser will be responsible for insuring the Goods at their full replacement value on and from the time of Delivery.

5.2 Title in the Goods (subject to clause 10) does not pass to the Purchaser until (a) all amounts owing by the Purchaser to the Company in respect of the Goods have been paid; and (b) all other obligations of the Purchaser to the Company in respect of the Goods have been met. The Company's retention of the title in the Goods secures payment of those amounts and the performance of those obligations.

5.3 Until the title in the Goods passes, the Purchaser holds the Goods as the Company's bailee and it:

- (a) must keep full and complete records of the Goods and allow the Company to inspect any records, inventories and accounts of sale of Goods;
- (b) must store the Goods safely and in such a way to ensure it is clear the Goods are the property of the Company and to ensure that the Goods do not deteriorate;
- (c) must insure the Goods with a reputable insurance company at their full replacement value;
- (d) must return the Goods if requested to do so by the Company following non-payment of any amount owing by the Purchaser to the Company, without limiting any other right the Company may have;
- (e) gives the Company the right to inspect the Goods or any part of them at all reasonable times; and
- (f) must not change its name, address or contact details without providing the Company with at least 30 days prior written notice.

5.4 Despite clause 5.3(b), the Purchaser may sell the Goods, to a third party in the normal course of the Purchaser's business, however, if the Goods are resold by the Purchaser, the Purchaser must hold the proceeds of that resale in trust for the Company until the Purchaser has paid the Company for those Goods. The Purchaser must not assign or grant a security interest in respect of any accounts owed to it in relation to the Goods without the Company's prior written consent.

5.5 If the Purchaser fails to comply with any of these terms and conditions in relation to the payment of the Price of Goods or any other amount owing to the Company, or breaches any of the provisions of clause 5.3, or becomes insolvent, it will be in default. If the Purchaser defaults then:

- (a) all monies owing by the Purchaser to the Company including in connection with any Contract become immediately due and payable; and
- (b) immediately on the Company's request, the Purchaser must return to the Company any Goods acquired from the Company; and
- (c) the Company may enter the premises at which those Goods are stored, and seize possession of them; and
- (d) the Company may retain, sell or otherwise dispose of those Goods.

5.6 The Purchaser gives an irrevocable authority to the Company or its agents, to enter any premises where the Goods may be stored at any reasonable time but without notice using the Purchaser's name and acting on its behalf, to remove any Goods not paid for in full by the Purchaser. The Company will not be liable for costs, damages or expenses or any other losses incurred by the Purchaser or any third party as a result of this action, whether in contract or in tort or otherwise. The Purchaser agrees to indemnify and keep indemnified the Company, its servants and agents for any alleged liability resulting from the repossession including but not limited to those arising from any third party claim and all costs of transportation and storage of the Goods by the Company. The Purchaser shall be liable for all costs (including legal costs on a solicitor client basis) incurred by the Company in respect of the repossession of the Goods.

## 6. Default and Termination

6.1. Without prejudice to any other rights or remedies of the Company, if the Purchaser:

- (a) fails to pay any amount due under the Contract by the relevant due date; or
- (b) commits a material breach of any other term of the Contract, and fails to remedy that breach within 10 days of receiving notice from the Company requiring the breach to be remedied; or
- (c) goes into liquidation or external administration or has a receiver or manager appointed in relation to any of its assets

or becomes insolvent or makes any arrangements with its creditors,

then all amounts owing to the Company, whether due for payment or not, will become immediately due and payable and the Company may (at its option) take one or more of the following actions:

(d) suspend the delivery of any Goods;

(e) recover possession of any Goods supplied under the Contract and dispose of them in accordance with clause 3.3; and

(f) immediately terminate the Contract,

and all costs incurred by the Company in taking any such action must be paid by the Purchaser.

6.2 Upon termination of the Contract the Purchaser must pay the Company the Price in respect of all Goods that have been delivered or are the subject of the Contract.

6.3 Termination of the Contract will not affect any of the rights and obligations of the Parties existing immediately prior to termination or any provisions of the Contract which are intended to survive termination.

## 7. Warranty

7.1 Nothing in this Contract excludes, restricts or modifies any terms, guarantees, conditions or warranties or the Company's liability for them which are imposed or implied by any statute, including the *Consumer Guarantees Act 1993*, and which by statute cannot be excluded, restricted or modified. Limitations and exclusions are made only to the extent that the Company may legally do so.

7.2 Subject to clause 7.5, and except as set out below, the Company warrants that the Goods will be free from defects in materials and workmanship for the shorter of the stated shelf-life of the Goods or 12 months from Delivery (the "**Warranty Period**"); and in case of delivery of services, the Company only warrants that the services have been provided with reasonable skill and care. All other warranties, conditions or other terms, whether express, implied, statutory or otherwise (including, but not limited to, merchantability and fitness for purpose) are excluded to the fullest extent permitted by law. This warranty will cease and will not apply to the extent that any non-compliance or defect in the Goods that has been caused, or contributed to, by: any failure to use, apply, store or maintain the Goods as instructed by the Company; normal wear and tear; use of the Goods other than for their agreed purpose; any defect in the Goods arising from a design, drawing or specification supplied by the Purchaser or on the Purchaser's behalf; any failure by the Purchaser to follow any instructions or guidelines provided in respect of the Goods; the continued use of any Goods after any defect becomes apparent; any Goods repaired or altered without the Company's written consent; or any deficiencies resulting from other reasons beyond the Company's control. No warranty claims may be made unless the Purchaser has paid the Price in full. The warranties will not apply if the Purchaser, in case of a defect, does not immediately take all appropriate steps to mitigate damages and notify the Company of the defect.

7.3 If any failure to meet the warranties under clause 7.2 appears within the Warranty Period, the Purchaser must promptly notify the Company in writing. Where any valid warranty claim is made in respect of any of the Goods within the Warranty Period set out in clause 7.2, the Company's liability is limited to:

(a) in the case of goods, at the Company's option, the replacement of the goods or the supply of equivalent goods; the repair of the goods; the payment of the cost of replacing the goods or of acquiring equivalent goods; or the payment of the cost of having the goods repaired; and

(b) in the case of services, at the Company's option, supplying the services again; or paying the cost of having the services supplied again.

7.4 The supply of repaired or replacement Goods by the Company pursuant to this clause 7 will not extend the duration of the Warranty Period. The Company will not be liable to compensate the Purchaser for any delay in either replacing or repairing the Goods or in properly assessing the Purchaser's claim.

7.5 Where any Goods supplied to the Purchaser are not manufactured by the Company (or one of the Company's related bodies corporate) then the only warranty that will apply to those Goods will be the applicable warranty provided by the manufacturer of those Goods. The Company will have no liability or responsibility in relation to any warranty or representation given by the manufacturer of those Goods.

7.6 The preceding sections of this clause 7 set out the exclusive remedies for all claims based on failure of, or defect in, the Goods provided under the Contract, whether such failure or defect arises before or during the Warranty Period and whether a claim, however, instituted is based on contract, indemnity, warranty, tort (including negligence), strict liability or otherwise.

7.7 The Purchaser warrants and represents that it will not make any warranties or representations in relation to any Goods other than warranties and representations contained in documentation supplied by the Company.

7.8 All warranties, releases, exclusions of liability and indemnities will remain valid and binding following termination of the Contract.

## 8. Limitation of Liability

8.1 The remedies of the Purchaser set out in these Conditions are exclusive and the total aggregate liability of the Company, on all claims of any kind, whether in contract, warranty, indemnity, tort (including negligence),

strict liability, or otherwise, will not exceed 100% of the Price at which the Goods giving rise to the claim were sold to the Purchaser.

8.2 In no event, whether as a result of breach of contract, warranty, indemnity, tort (including negligence), strict liability, or otherwise, will the Company or its subcontractors or suppliers be liable for any one or more of the following: loss of profit, revenue, business, contracts, opportunity, goodwill, use, production, anticipated savings, expenses, costs or similar loss; any special, consequential, incidental, indirect, speculative, punitive or exemplary loss or damage; and claims of the Purchaser's customers for any of the foregoing damages, and the Purchaser agrees to defend, indemnify and hold harmless the Company from any such claims by any of the Purchaser's customers.

8.3 Nothing in these Conditions will operate or be construed to operate so as to exclude or restrict the liability of the Company for death or personal injury caused by reason of the negligence of the Company (subject to the contributory liability of any other person).

## 9. Force majeure

The Company will not be liable to the Purchaser for any failure or delay in the performance of any of its obligations under the Contract where it is prevented by:

- (a) reasons beyond its reasonable control including any act of God, malicious damage, industrial action, government action, accident, breakdown of machinery, default of a supplier, fire, flood, or similar event; or
- (b) acts (or omissions) of the Purchaser.

## 10. Intellectual property

All information, drawings, specifications, documents, design material and all other data which the Company has given to the Purchaser is proprietary and confidential and will remain the absolute exclusive property of the Company together with all intellectual property rights in those items. The Purchaser agrees that it will not disclose any such information to third parties, whether directly or indirectly, without the Company's prior written consent. All intellectual property rights, including but not limited to, inventions, patents, copyrights, trade marks, designs, confidential information and know how, belonging to or provided by the Company and used or developed in the course of the fulfilment of the Contract by the Company will remain the absolute exclusive property of the Company.

## 11. Confidentiality

11.1 In connection with the Contract, the Company and the Purchaser (as to information disclosed, the "Disclosing Party") may each provide the other party (as to information received, the "Receiving Party") with Confidential Information. The Purchaser must not provide any Confidential Information to the Company without the Company's prior written consent to receive it. "Confidential Information" as used in these Conditions shall mean information in relation to the pricing of the Goods and any discounts, rebates and other commercial terms offered, all terms of the Contract and all information related to the business or products of the Disclosing Party that is not known generally to the public, provided that the obligations of these Conditions will not apply as to any portion of the Confidential Information which:

- (a) is or becomes generally available to the public other than as a result of disclosure by the Receiving Party; or
- (b) becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party when such source is not, in the best of the Receiving Party's knowledge, subject to a confidentiality obligation to the Disclosing Party; or
- (c) has been or is subsequently independently developed by the Receiving Party without reference to the Confidential Information.

11.2 The Receiving Party agrees, except as otherwise required by law:

- (a) to keep the terms of the Contract and all information related to it confidential;
- (b) to use the Confidential Information only in connection with the Contract, and permitted use of the Goods, and
- (c) to take reasonable measures to prevent disclosure of the Confidential Information, except to its employees to the extent necessary to facilitate the performance of its obligations and the exercise of its rights under the Contract. The Receiving Party accepts liability that its employees will abide by these provisions.

11.3 If either party is requested or required (by interrogatories, subpoena, or similar legal process) to disclose any Confidential Information, such party agrees to provide the Disclosing Party with prompt notice of each such request, to the extent practicable, so that the Disclosing Party may seek an appropriate protective order or waive compliance by the Receiving Party with the provisions of this clause 11, or both.

## 12. PPSA

12.1 The Company may allocate amounts received from the Purchaser in any manner it determines, but in default will apply such amounts first to payment of any unsecured amount owing to the Company, next as to any reasonable enforcement expenses and then as to any secured balance owing to the Company.

12.2 If Part 9 of the PPSA would otherwise apply to the enforcement of a security interest arising in connection with the Contract or these Conditions, to the extent the law permits, the Purchaser and the Company agree that:

- (a) sections 114(1)(a), 133 and 134 are excluded; and

- (b) the Purchaser waives Purchaser's rights under sections 116,120(2), 121, 125, 126, 127, 129 and 131 of the PPSA.

12.3 The Purchaser waives the right to receive a copy of a verification statement in respect of any financing statement or a financing change statement in accordance with section 148 of the PPSA.

12.4 The Purchaser consents to the Company effecting and maintaining a registration on the PPSA register (in any manner the Company considers appropriate) in relation to any security interest contemplated by the Contract or these Conditions and the Purchaser agrees to provide all assistance reasonably required to facilitate this. The Purchaser agrees to pay all fees and charges associated with the Company making such registrations.

12.5 The terms 'account', 'proceeds', 'security interest' and 'verification statement' have the respective meanings given to them under, or in the context of, the PPSA.

### 13. Notices

13.1 Any notice given under these Conditions must be in writing, addressed to the registered office or principal place of business of the addressee or any other address as may at the relevant time have been notified as the correct address for service of documents. Any notice must be given by hand or sent by (airmail if overseas) registered delivery post. E-mail is not effective notice. Notices may be faxed provided they are also sent in accordance with this clause.

13.2 Any notice, demand, or other communication will not be effective until received and will be deemed, in the absence of proof to the contrary, to have been received by the party to whom it was sent:

- (a) in the case of personal delivery, when delivered;
- (b) in the case of a letter, on the fifth working day after posting; and
- (c) in the case of a fax, on the date and time at which the senders' information system indicates that the fax was sent to the email address of the notified addressee,

but if the delivery or receipt is on a day which is not a working day, it is deemed to have been received at 9.00am on the next working day.

### 14. General

14.1 A party must not otherwise assign or transfer the benefit or obligations of the Contract without the prior written consent of the other party.

14.2 Any waiver by the Company of any breach of the Contract by the Purchaser will not be treated as waiving any subsequent breach of the same or any other provision.

14.3 These Conditions and the Order accepted by the Company (with or without modifications) contain the entire agreement between the Parties and no other agreements, representations, warranties, promises or understandings express or implied will bind the parties or form part of a Contract. Each party agrees that it has not relied on, or been induced by, any representations of the other party not contained in these Conditions or the Contract.

14.4 If a provision of the Contract is determined to be void or unenforceable, this finding shall not render other provisions void or unenforceable, and the Company and Purchaser shall make their best endeavours to replace such a provision with a valid one, covering the original commercial intention as far as legally possible.

14.5 These Conditions and each Contract are governed by the laws of New Zealand. Each party irrevocably submits to the exclusive jurisdiction of the New Zealand courts.

14.6 If any provision in a Contract is found to be invalid, void, illegal or unenforceable then the validity and enforceability of the other provisions of the Contract will not be affected.

### 15. Definitions

The following definitions apply in these Conditions:

**Company** means BSN Medical Limited.

**Contract** means an Order submitted by the Purchaser and accepted by the Company in writing, together with these Conditions.

**Goods** means goods listed on the Company's current price list that are specified in an Order accepted by the Company in writing.

**GST and Goods and Services Tax** have the meaning given in the Goods and Services Tax Act 1985.

**Order** means an order for goods listed on the Company's current price list that is in a form acceptable to the Company and that is submitted to the Company by a proposed purchaser of the Company's goods.

**Parties** mean the Company and the Purchaser.

**PPSA** means the Personal Property Securities Act 1999.

**Price** means the price of the Goods on the Company's then current price list.

**Purchaser** means the purchaser specified in an Order.

### 16. Interpretation

16.1 The headings used in this document are for convenience only and shall not affect the interpretation of these Conditions.

16.2 References to 'include' and 'including' are to be construed without limitation.

16.3 Unless otherwise stated, an expression used or defined in the Companies Act 1993 has the same meaning in these Conditions.

16.4 Where an expression is defined, another party of speech or grammatical form of that expression has a corresponding meaning.

16.5 A reference to a person includes a reference to a corporation, firm, association or any other entity, and vice versa.

16.6 References to the singular include the plural and vice versa and a reference to any gender includes a reference to all other genders.