

1. GENERAL These Terms govern the supply of Goods from JCSM to another ("Buyer"). "Goods" means those goods as set out in JCSM's price list ("Price List") that JCSM agrees to supply to the Buyer. The Buyer acknowledges that JCSM has been appointed by a company known as the ("Principal") as a distributor of the Goods.

2. PRICE AND GST Prices will be those set out on the Price List applicable on the date the Goods are dispatched. The Price List may change from time to time, at JCSM's sole discretion, effective upon 30 days written notice to the Buyer. If the Buyer does not agree with the changes to the Price List, the Buyer has the ability to terminate these Terms upon 30 days' notice in writing to JCSM. No credit will be granted to the Buyer for Goods purchased in the event of a price reduction. Unless otherwise stated, prices are exclusive of GST and any other levies and statutory taxes (which will be payable by the Buyer). The Buyer will pay to JCSM the GST for the supply of the Goods at the time payment is due for the Goods under clause 5. The Buyer will keep confidential JCSM prices, rebates and allowances.

3. ORDERS (a) each order by a Buyer to JCSM are to be expressed in full shipper multiples. Any orders for part of a shipper will be deemed to be for a full shipper. Order will be accepted only for quantities equal to or greater than the minimum order quantity set out in the Price List (under "shipper or carton qty") by product unless otherwise agreed. (b) JCSM may discontinue supply of any Goods without notice unless otherwise required by law. JCSM will use its best endeavours to provide the Buyer with 30 days written notice in the event that any supply of Goods is to be discontinued. However, JCSM may not be able to provide the Buyer with notice if the Principal does not provide JCSM with advance notice regarding any delay with the supply of Goods. (c) The Buyer agrees to trade electronically with JCSM in the provision of orders, forecasts and the exchange of data. (d) Each order constitutes an irrevocable offer by the Buyer to purchase the Goods specified in that order. (e) Subject to JCSM using reasonable endeavours to satisfy any order received from the Buyer, JCSM may: accept an order by providing the Buyer with confirmation of that order; or, decline an order (without being obliged to give reason for doing so) by giving notice (either verbal or in writing) to that effect to the Buyer. (f) JCSM will notify the Buyer if JCSM is unable to supply the quantity of Goods specified in an order but is able to supply a lesser quantity. The Buyer may offer to purchase the lesser quantity by placing a new order with JCSM. For the avoidance of any doubt, clause 3(e) of these apply to any offer made in accordance with this clause 3(f).

4. PACKAGING AND ORIGINAL LABELLING JCSM relies on its Principals to determine the packaging and labelling to be used for Goods supplied to the Buyer. Under no circumstances will the Buyer modify, remove or replace any Good's labelling or use any advertising and promotional materials in relation to the Goods, unless otherwise approved by JCSM or its Principal in writing.

5. DELIVERY AND RISK (a) Unless otherwise agreed in writing between the parties, JCSM will arrange for transport of the Goods at the Buyers cost. Risk in the Goods will pass on delivery to the transporter. (b) Goods will be transported to one depot maintained by the Buyer, unless other arrangements are agreed. (c) JCSM will make reasonable efforts to have Goods dispatched on agreed dates, or if any of those dates falls on a weekend or public holiday, the first working day after the date agreed. (d) JCSM will not be liable for any penalties or damages (direct or indirect) arising as a result of late delivery. (e) JCSM may cancel the acceptance of any order, or withhold delivery of Goods, in the event that the Buyer has not made payment of any amount due and payable by the Buyer or for breach of these Terms. (f) Where the Buyer does not take delivery of Goods, the purchase price for the Goods becomes immediately due and payable by the Buyer and JCSM is entitled to store the Goods (at a location nominated by JCSM's in its reasonable discretion) without liability to the Buyer and at the Buyer's cost and risk.

6. PALLETS etc (a) The Buyer will receive deliveries of Goods on disposable pallets by default. JCSM cannot guarantee delivery on pallets of any standard, quality or size. (b) The Buyer acknowledges that the quantity of Goods delivered on each pallet may vary depending on the type of pallet used. (c) If the Buyer requires Goods to be delivered on Chep or Loscam pallets (and JCSM is able to arrange delivery on such pallets), the Buyer agrees to adhere to the Chep or Loscam rules and requirements (as applicable).

7. PAYMENT Goods will be invoiced by JCSM on dispatch. Unless the Goods are expressly sent on "cash on delivery" or "collect on delivery" (as the context allows) terms, or other terms are notified by JCSM, invoices are to be paid in full without set-off or deduction within 30 days of the date of invoice. If the Buyer fails to pay any amount due within 15 days after a written demand has been made by JCSM to the

Buyer: (a) JCSM may charge interest on a daily basis at the rate of the Reserve Bank Official cash rate plus 5% on the overdue amount. Such interest shall be capitalised monthly. (b) all amounts then owing to JCSM immediately and automatically become due and payable; (c) JCSM may withhold further delivery until such time that full payment of all money due from the Buyer to JCSM is paid; (d) JCSM may vary or withdraw credit (acting reasonably); and (e) the Buyer will pay, at JCSM's discretion, all reasonable collection costs on all outstanding amounts of the Buyer's account.

8. TITLE (a) The Buyer acknowledges that JCSM retains title to the Goods until full payment by the Buyer to JCSM. (b) The Buyer acknowledges and agrees that, until it has made full payment for the Goods, it must: store the Goods separately so that they are clearly identifiable as the property of JCSM; keep those Goods free from any charge, lien or other encumbrance; and hold those Goods as bailee and fiduciary for JCSM. (c) The Buyer acknowledges and agrees that if it is in breach of its payment obligations to JCSM with respect to the Goods which have been delivered to the Buyer, then JCSM, will issue a default notice in relation to any amount due and not paid and give the Buyer not less than 15 days within which to remedy the non-payment. If the non-payment is not remedied within the period stipulated within the notice period set out above, JCSM may without notice to the Buyer, and without prejudice to any of its right or remedies at law, may enter any premises at which the Goods are located and recover possession of the same. (d) The Buyer agrees that the 'Retention of Title' is a purchase money security interest for the purposes of the *Personal Property Securities Act 2009* (Cth) ("PPSA").

9. CLAIMS AND RETURNS (9.i) Goods damaged or spoilt before delivery, incorrectly sent, or short delivered, must be notified to JCSM within 48 hours (or such other period as required by law) of delivery and confirmed to JCSM by a duly authorised and completed "JCSM Return Goods Form" and, if requested by JCSM, photographs of any broken, leaking or otherwise damaged Goods. Subject to these Terms, Goods will be accepted for return and replacement only if they come into any of the following categories; (a) Goods which JCSM is satisfied were damaged in transit between the JCSM warehouse and the delivery dock of the Buyer, provided JCSM is notified by the Buyer no later than 48 hours (or such other period as required by law) after receipt and the Buyer has indicated on the carrier's delivery docket that Goods are "damaged" or "subject to check"; (b) Goods that have been incorrectly supplied; and (c) Goods which JCSM is satisfied are faulty in materials or workmanship; or (d) were not ordered by the Buyer. (9.ii) To the maximum extent permitted by law and without limiting the other provisions of this clause 9, the following Goods will NOT be accepted for return: (a) Goods sold on a non-return basis; (b) Goods having a broken seal, a label removed or a chemist label or price tag attached; (c) Goods involved in a fire sale, sacrifice sale or bankruptcy sale; (d) Goods which are NOT expired, except as specified in the preceding paragraph; (e) expired dated Goods, except as specified in the preceding paragraph; (f) damaged Goods, except as specified in the preceding paragraph; and discontinued Goods. (9.iii) Short delivered Goods will be credited to the Buyer by JCSM subject to JCSM's verification of the short delivery. (9.iv) The Buyer must obtain the prior written consent of JCSM prior to JCSM accepting the return of any Goods from a Buyer, unless the acceptance of the return is otherwise required under any statute. The Buyer will bear the onus of proving that the return was required under law. (9.v) All returns will be at the expense of the Buyer (including the cost of transport) unless otherwise agreed.

10. PPSA Upon executing this Agreement, the Buyer acknowledges and agrees that this Agreement (a) constitutes a security agreement for the purpose of the PPSA; and creates a Security Interest (as defined in accordance with the PPSA) in (a)(i) all Goods supplied by JCSM to the Buyer and (a)(ii) all Goods that will be supplied in the future by JCSM to the Buyer. (b) JCSM may, at its discretion, do any of the following: (b)(i) register or give any notification in connection with any relevant Security Interest and exercise rights in connection with the Security Interest; and (b)(ii) give notice to the Buyer requiring it to do anything at its expense (including amending this Agreement, executing any new document or agreement, obtaining consents and supplying information) which JCSM requires for the purposes of the relevant Security Interest including registering the Security Interest on the PPSA register. (c) The Buyer must (c)(i) comply with any notice received pursuant to clause 10(b) within the time stipulated in the notice; and (c)(ii) promptly sign any further documents and/or provide any further information (such information to be complete and up to date in all respects) which JCSM may reasonably require to: (c)(ii)(A) register a financing charge statement in relation to the Security Interest; (c)(ii)(B) register any other document required to be registered by the PPSA; or (c)(ii)(C) correct a defect in a statement referred to in

clause 10(c)(ii)(A) or 10(c)(ii)(B). JCSM need not give any notice under the PPSA (including a verification statement or a financing change statement) unless the notice is required by the PPSA and cannot be excluded. No party may disclose information of the kind referred to in section 275(1) of the PPSA (except where the parties may do so where required due to the operation of section 257(7) of the PPSA) and the Buyer must not authorise the disclosure of such information. If Chapter 4 of the PPSA would otherwise apply to the enforcement of the Security Interest under these Terms, the parties agree that the following provisions of the PPSA will not apply, or are waived, as the context requires: sections 95, 118, 123, 125, 128, 129, 130, 132(1), 132(4), 135, 142 and 143.

11. **LIMITATION OF LIABILITY** To the maximum extent permitted by law, JCSM will not be liable to any claim by the Buyer, whether in respect of or arising out of a breach of contract or in any other way, including claims in equity or tort, or arising under statute, unless within 12 months after delivery of the Goods about which the claim is made, the Buyer has given JCSM notice in the prescribed form. Time is of the essence for the purpose of giving notice of a claim. Any claim, including claims of set-off at law or in equity, not made within 12 months after delivery of the Goods about which the claim is made shall, subject to any relevant law, be barred. To the maximum extent permitted by law, JCSM will not be liable for any consequential loss or damage (including loss of profit or loss of opportunity) whatsoever.

12. **REPRESENTATIONS BY BUYER** The Buyer must not make any representation in relation to the Goods without JCSM's prior approval.

13. **EXPORT PROHIBITION** Goods purchased by the Buyer may only be used or resold in Australia. The Buyer agrees it will not resell the Goods to anyone whom it knows or ought to know intends to export the Goods outside of Australia. Any breach of this clause 13 will preclude the Buyer from purchasing further Goods from JCSM; until such time that JCSM is satisfied in its sole discretion that the Buyer will not further breach this clause.

14. **COMPLIANCE WITH LAW, REGULATION AND GUIDELINES** The Buyer will comply with all laws and JCSM requirements relating to the purchase, storage, onward sale or other dealing with the Goods, including complying with all relevant adverse event reporting requirements, Therapeutic Goods Administration ("TGA") regulations, the Code of Good Wholesaling Practices, and guidelines and information issued by JCSM from time to time. The Buyer must maintain a suitable place of business and adequate warehouse facilities within Australia to allow for the proper and secure storage, segregation, temperature control, handling and transportation of the Goods, including those Goods that may be classified as hazardous materials.

15. **BUYER COMPLAINTS** (a) On receipt of a Buyer complaint or other complaint concerning any of the Goods, the Buyer must: immediately obtain full details of the complaint, the nature and reasons for the complaint and the Good(s); and, promptly obtain the batch number for the Good(s) and seek the return to JCSM of any unused affected Good(s) and its packaging. (b) The Buyer must comply with all procedures and directions of JCSM in relation to the management of a complaint referred to in this clause. (c) The Buyer must not admit any liability in relation to a Buyer complaint except as directed or permitted by JCSM.

16. **SUSPENSION OR RECALL** In the event that JCSM's Principal and/or JCSM recalls any Good(s), or if any government or authority properly requires recall of any Good(s) for any reason, the Buyer must effect such recall in accordance with all relevant legal and regulatory requirements and directions of the Principal and/or JCSM. The parties will consult closely and the Buyer must keep the Principal and JCSM fully informed from time to time as to the status of such recall. The Buyer must not communicate with the news media, consumers, government or regulatory authorities in relation to any recall without the prior written approval of the Principal or JCSM. That approval may contain such conditions as the Principal or JCSM may in its absolute discretion impose. In the event of a recall of Good(s), the party responsible for causing the situation resulting in the recall will bear all costs and expenses associated with that recall. Each party will provide assistance reasonable requested by the other party in connection with the implementation of any recall pursuant to this clause.

17. **INDEMNITY** To the maximum extent permitted by law, the Buyer agrees to indemnify and keep indemnified JCSM for any cost, expense, damage, liability or loss (direct or indirect) in relation to any act or omission of the Buyer arising out of, or in connection with: a breach of any of these Terms; and any negligent act or omission or wilful misconduct of the Buyer or any of its respective officers, employees, agents or third party contractors.

18. **INTELLECTUAL PROPERTY RIGHTS** (a) The Buyer: acknowledges the rights, title and interest of the Principal, its associated companies or any one or more of them, in or to all Trade Marks, patents, inventions, copyright (including future copyright), designs, business names, know-how, reputation, trade secrets, goodwill and other intellectual or commercial property in or relating to: the Goods; or, the advertising,

promotion, distribution or sale of the Goods, (collectively the "Intellectual Property") are the property of the Principal or its associated companies; must disclose to the Principal and provide copies of all Intellectual Property created by or on behalf of the Buyer as and when it is created; assigns to the Principal all right, title and interest in any Intellectual Property referred to in this clause (this assignment will take effect immediately each part of the Intellectual Property is created). (b) The Buyer must not use any Intellectual Property, in particular the Trade Marks, in a manner which requires a licence from the Principal or an associated company except pursuant to a written licence granted by the Principal or an associated company.

19. **WARRANTIES AND LIMITATION OF LIABILITY** To the maximum extent permitted by law, implied warranties and conditions in relation to the Goods are excluded. To the maximum extent permitted by law and without limiting clause 11, JCSM's liability for a breach of any warranty or condition implied by law about Goods sold, is at the option of JCSM, limited to replacing the Goods or paying the cost of supplying equivalent Goods to the Buyer. The Buyer represents and warrants that it has all licences, consents, and approvals required to sell or otherwise deal with the Goods within the Commonwealth of Australia.

20. **PRODUCT LIABILITY** (a) In the event the Buyer becomes aware of any circumstances which may result in a product liability claim which is life threatening or there is any chance of injury or death, the Buyer must notify the Principal and JCSM in writing soon as practicable but no later than 7 days of becoming aware of those circumstances or receipt of such a claim. In respect of all other product liability claims, the Buyer must notify the Principal and JCSM within 14 business days. The Buyer must promptly give the Principal and JCSM copies of all correspondence in relation to that claim. (b) In the event any legal proceedings are commenced by customer of the Buyer in relation to a product liability claim, the Buyer agrees that the Principal has the right, at the Principal's cost, to assume the conduct, care and control of those proceedings, using legal representation of its own choosing. The Buyer will effect and maintain such insurance policies as are prudent for the Buyer's business, including without limitation product liability insurance.

21. **CHANGE OF OWNERSHIP** The Buyer must give JCSM at least 14 days written notice before any change in the Buyer's ownership, or effective management or control of its business becomes effective.

22. **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 other cause not in JCSM's control, then the time for delivery will be extended until the effect of the delaying cause has ceased. Neither JCSM nor the Buyer will be entitled to cancel these Terms, nor will JCSM be liable for damages for the resultant delay.

23. **TERMINATION** If (a) any invoice remains unpaid for a period of not less than 15 days after a default notice has been issued by JCSM in relation to any amount due and not paid by the Buyer; (b) the Buyer fails to take delivery of any Goods other than in accordance with its contractual/arrangement with creditors, or a manager/receiver/provisional liquidator is appointed to the Buyer's business, JCSM may, without prejudice to its other rights and remedies, (i) terminate or suspend the supply of Goods to the Buyer; (ii) be paid 5% of the price of Goods ordered but not delivered, being a genuine pre-estimate of liquidated damages in the event of termination.

24. **VARIATION, WAIVER, AND ASSIGNMENT.** JCSM may amend these Terms from time to time by written notice expressly setting out the nature of the variation. JCSM's acceptance of payment, or delay or failure to act will not prejudice its rights or constitute a waiver of its rights with respect to any other breach of this Agreement. Neither party may assign its rights in these Terms in whole or in part without the written consent of the other party.

25. **GOVERNING LAW AND JURISDICTION** All matters arising in connection with these Terms will be governed by the laws applying in South Australia. All parties submit to the exclusive jurisdiction of the courts sitting in that State.

26. **PRIVACY** The privacy of the Buyer's personal and credit related personal information ("personal information") is important to JCSM. JCSM is committed to respecting the Buyer's right to privacy and protecting the personal information provided by the Buyer in accordance with the provisions of the *Privacy Act 1988* (Cth). The Buyer acknowledges that any personal information collected by JCSM is subject to JCSM's Privacy Policy, available at [www.jcsm.com.au](http://www.jcsm.com.au). JCSM's Privacy Policy sets out the purposes for which the Buyer's personal information is collected, the consequences if such information is not provided to JCSM, the third parties to which JCSM may disclose the Buyer's personal information, how the Buyer may seek access or correction of its personal information, whether the Buyer's personal information is likely to be disclosed to overseas entities and, if so, in which countries and how the Buyer may complain about a breach of JCSM's obligations in respect of the Buyer's personal information and how such a complaint will be dealt with.