

1. **DEFINITIONS**

"**Device Technologies**" means the purchaser named in the Purchase Order.

"**Goods**" means the goods specified in the Purchase Order including all schedules and annexures.

"**GST**" means any goods and services tax or similar tax imposed in Australia.

"**Purchase Order**" means the Device Technologies purchase order issued to the Supplier referencing these Terms.

"**Services**" means the services specified in the Purchase Order and all necessary ancillary and incidental work.

"**Supplier**" means the supplier of the Goods and/or the Services named in the Purchase Order.

"**Supplier Code of Conduct**" means Device Technologies' Supplier Code of Conduct, which can be found at <https://www.device.com.au/policy-library> and upon request.

"**Terms**" means the Purchase Order together with these purchase order terms and conditions.

2. **GENERAL**

- (a) Notwithstanding any other provision of these Terms, in the event that Device Technologies (or any of its subsidiary companies) and the Supplier have entered into a duly executed, valid, written contract which applies to the supply of the Goods or Services (**Master Contract**), then the terms and conditions of the Master Contract will prevail over the terms and conditions of these Terms to the extent of any inconsistency.
- (b) The Supplier acknowledges and agrees that:
 - (i) The Goods and Services sold and/or provided by the Supplier are supplied in accordance with these Terms;
 - (ii) These Terms (which may only be waived or amended in writing and signed by Device Technologies) will to the extent of any inconsistency prevail over all and any terms or conditions of the Supplier;
 - (iii) acceptance of these Terms and/or performance of these Terms will be deemed to be acceptance of this condition notwithstanding that the acceptance of any documentation of the Supplier may contain a condition similar in terms to this condition.
- (c) Except to the extent expressly contained in a Master Contract, any prior representations, negotiations, arrangements, understandings or communications between the parties in connection with the Goods or Services are superseded by these Terms.
- (d) No changes to the Purchase Order may be made without Device Technologies' prior written consent.
- (e) No right, title, interest, or license in any of Device Technologies' intellectual property is granted to the Supplier unless specifically stated in writing from Device Technologies.
- (f) Device Technologies hereby disclaims any interest in and right to any patents, trademarks and trade names owned or licensed by the Supplier, whether arising out of these Terms, or arising in some other manner, except Device Technologies may, during and only during the term of these Terms enjoy such intellectual property rights granted through the supply of the relevant Goods or Services by the Supplier. Device Technologies will promptly notify the Supplier of any infringement or threatened infringement of any patents, trademarks or trade names under which the Goods are sold of which Device Technologies becomes aware, and will at the Supplier's request and to the extent reasonably possible assist in preventing or eliminating such infringement.
- (g) Device Technologies is a member of the Medical Technology Association of Australia Limited ('MTAA') and is required to adhere to the Medical Technology Industry Code of Practice <https://www.mtaa.org.au/code-of-practice>. Any purchase of Goods or Services by Device Technologies will, where relevant, be in reference to and in accordance with this code.
- (h) Where Goods are supplied by the Supplier to Device Technologies on consignment, the terms contained in **Annexure A** will apply in addition to these Terms and Annexure A will prevail over these Terms to the extent of any inconsistency.

3. **TRANSFER OF PROPERTY**

Title to Goods, other than those supplied on consignment:

- (a) title to any Goods ordered pursuant to these Terms will pass to Device Technologies upon the earlier of physical delivery or payment; and
- (b) the risk in any Goods ordered pursuant to these Terms will pass to Device Technologies after physical delivery is taken by Device Technologies and the Goods have been inspected and accepted by Device Technologies in accordance with clause 4.

4. **DELIVERY OF GOODS**

- (a) Unless Device Technologies has stipulated a different place of delivery, delivery of the Goods to the ship to address stated in the Purchase Order or nominated address is to be taken to constitute delivery to Device Technologies and the Supplier's obligation in respect of delivery satisfied.
- (b) All Goods will be received subject to inspection within a reasonable time after delivery irrespective of date of payment. Signed delivery dockets will not mean

acceptance by Device Technologies of Goods delivered, and will only constitute confirmation of the number of packages or cartons delivered. Device Technologies will promptly notify the Supplier of any defects or unsaleable Goods and hold such Goods for the Supplier's instructions and at Supplier's risk for a reasonable period not exceeding 60 days. If Supplier's instructions are not received within such period, Device Technologies may return the defective Goods to the Supplier's premises at the Supplier's expense and risk, and any expense incurred by Device Technologies in such return will be payable forthwith by the Supplier and may be set off by Device Technologies against any moneys otherwise due by Device Technologies to the Supplier. In addition, the Supplier will refund the price paid by Device Technologies for those Goods and provide compensation for any other reasonably foreseeable loss or damage.

- (c) Device Technologies will not be required to accept or pay for quantities in excess of those ordered by Device Technologies. Device Technologies accepts no responsibility for any Goods delivered to locations or at times other than those specified by Device Technologies in a Purchase Order.
- (d) Unless otherwise agreed in writing, the Supplier is responsible for all taxes (excluding GST), duty and transport costs, including freight and insurance charges, incurred in delivering the Goods. The Supplier must also bear the costs of insuring the Goods under a goods in transit policy with a reputable insurer authorised under the *Insurance Act 1973* (Cth).
- (e) All Goods delivered must be accompanied by a delivery docket detailing the Purchase Order number, and/or an advance shipping notice (if requested by Device Technologies) the description and quantity of Goods, and any other information reasonably required by Device Technologies.
- (f) If either party determines that any quantity of the Goods should be recalled for any reason, that party will give the other party written notice of its intention to recall that quantity of the Goods and specify its reasons. The Supplier will be solely responsible for any recall of the Goods (either at the request of a regulatory authority or one of the parties) and agrees to work with Device Technologies to minimise the disruption caused by any such recall.

5. **PROVISION OF SERVICES**

- (a) The Supplier must provide the Services competently, safely and in compliance with all applicable regulations, ordinances, laws, and industry standards.
- (b) The Supplier must provide the Services in compliance with Device Technologies' work practices and procedures, as notified by Device Technologies to the Supplier from time to time (with all necessary protective clothing or equipment to be provided and kept in good repair by the Supplier).
- (c) At any time, if Device Technologies is dissatisfied with the Supplier's provision of the Services or the Supplier has failed to perform all or any part of the Services, it may request the Supplier to provide the Services again and the Supplier must perform the work at no extra charge to Device Technologies.
- (d) The Supplier must not subcontract or delegate the provision of the Services to any other party without the prior written consent of Device Technologies. In any event, any subcontracting or delegation by the Supplier will not relieve the Supplier of any of its obligations.

6. **TERMINATION**

Device Technologies may terminate these Terms or any undelivered or unperformed part of these Terms if the Supplier does not make deliveries strictly in accordance with the delivery schedule, commits any breach of the terms of these Terms, becomes insolvent or commits an act of bankruptcy, or has an administrator, liquidator, receiver or official manager appointed to it, or if the Supplier ceases or indicates that it is about to cease carrying on business. This right of termination is in addition to any other remedies which Device Technologies may have in law or equity.

7. **WARRANTIES**

- (a) Without limiting the generality of any other warranty given by the Supplier to Device Technologies under or related to these Terms, the Supplier warrants to Device Technologies that:
 - (i) all Goods supplied to Device Technologies shall be free from defects in construction, material, and workmanship for a minimum period of one (1) year from the date of delivery to Device Technologies; and
 - (ii) all Goods supplied to Device Technologies will be of merchantable quality, fit for the purpose for which they are commonly supplied, correspond to the Supplier's descriptions of them and will comply with any specification stipulated by Device Technologies to the Supplier.
- (b) The Supplier warrants to Device Technologies that the Services will be performed with all due skill and care normally exercised by qualified and experienced persons in the performance of similar services. The Supplier guarantees the Services against faulty workmanship for one (1) year from completion of the Services.

8. INDEMNITY

The Supplier indemnifies and must keep indemnified Device Technologies against all losses, damages, liabilities, claims and expenses (including legal costs on an indemnity basis) incurred or suffered by Device Technologies (including claims by an injured patient or third party) arising out of or in connection with:

- (a) any breach by the Supplier of its obligations under these Terms;
- (b) any claim by a person that Device Technologies' use of any intellectual property or material provided by the Supplier to Device Technologies pursuant to these Terms infringes a third party's intellectual property rights, except to the extent that the claim arises through a breach by Device Technologies of its obligations; and
- (c) the manufacture, supply and delivery of the Goods, including faulty manufacturing resulting in defective goods.

9. LIMITATION OF LIABILITY

- (a) Each party acknowledges and agrees that neither party will be liable for any lost earnings, profits or goodwill or any other indirect, consequential, incidental, exemplary or punitive damages (collectively, "Losses") suffered by any person or entity, including any affiliates or associated party, caused directly or indirectly by the acts or omissions of a party, its employees or agents in the course of performing obligations or functions contemplated under or related in any way to these Terms (including, without limitation, any breach by a party's obligations under these Terms).
- (b) Notwithstanding clause 9 (a) above, and except for instances of (i) negligent acts or omissions, or (ii) fraud or intentional willful misconduct, or proven product defect (where the Supplier will bear all liability in accordance with clause 9 (c)), either party's maximum aggregate liability for any and all causes whatsoever, regardless of the form of action, whether in contract or tort, including negligence, and whether or not a party is notified of the possibility of damage to the other party, will be limited to the nominated insured amounts under each Party's relevant umbrella insurance policies up to a maximum of \$20 million.
- (c) The Supplier will be solely responsible for any costs, losses, liabilities or expenses resulting from any and all product liabilities related to faulty manufacturing and any product defect of the Goods.

10. INSURANCE

- (a) Each party will be responsible for maintaining their own applicable business insurances during the term of these Terms.
- (b) As supplier of the Goods and Services the Supplier agrees to obtain and maintain, at its own cost, product liability insurance sufficient to cover all liabilities of the Supplier under or related to these Terms, including but not limited to any liability that may arise as a result of any product defect, or loss, damage, injury or death caused by any Goods. This insurance should have a minimum limit of liability of not less than \$20 million for any one occurrence.
- (c) Upon request, the Supplier must make available to Device Technologies a copy of the certificate of currency in relation to the insurance policies.

11. VARIATION

Device Technologies may modify the Terms from time to time at its sole discretion by updating the Terms found at <https://www.device.com.au/policy-library>. The "Modified" date at the bottom of these Terms will indicate when the latest changes were made. A Purchase Order which occurs following the posting of a new version of the Terms constitutes acceptance of the version currently in effect.

12. PRICE

The price of the Goods and Services supplied under these Terms is as stated in the Purchase Order and must remain firm. No variation will be accepted, without the prior written approval of a duly authorised representative of Device Technologies.

13. GST

- (a) If:
 - (i) a party incurs a liability to pay GST on any supply it makes to the other party under these Terms;
 - (ii) the party making the supply certifies that it has not priced the supply to include GST; and
 - (iii) the party making the supply is registered for GST purposes, the party receiving the supply agrees to pay the party making the supply, in addition to any other consideration payable for that supply under these Terms, an amount calculated by multiplying the amount payable by the party receiving the supply by the prevailing GST rate, provided always that such amount will not become payable until 10 Business Days after a valid tax invoice is issued by the party making the supply.
- (b) Notwithstanding any other provision in these Terms if imposition of a GST or any subsequent change in the GST law is accompanied by or undertaken in connection with the abolition of or reduction in any existing taxes, duties or statutory charges (in this clause 13 "Non-GST Taxes"), the consideration (excluding any GST) payable by Device Technologies for any supply made under these Terms will be varied as a consequence of the abolition of or reduction in Non-GST Taxes, whether directly by way of a variation in Non-GST Taxes paid or payable by the Supplier to its suppliers or to any government or indirectly by way of a variation in the prices (excluding any GST) charged by suppliers to the Supplier. The parties agree that:
 - (i) the relevant proportion will be the subject of negotiations

- made in good faith between them at the relevant time; and
- (ii) those negotiations may, without limitation, deal with the extent to which any Non-GST Taxes are relevant to this clause (for example, income tax).

14. TERMS OF PAYMENT

Except where Goods are supplied by the Supplier to Device Technologies on consignment, Device Technologies shall pay the price for all Goods and Services ordered and accepted by it within sixty (60) days of the date of receipt of those Goods or Services and corresponding invoice by electronic funds transfer to the Supplier's nominated bank account as detailed on the Supplier's invoice.

15. CONFIDENTIALITY

- (a) For the purposes of these Terms, confidential information means information which a party expresses to be confidential, including the existence of these Terms and other information such as know-how relating to the Goods, product development data, pricing information, information concerning resins and other raw materials design criteria, customer lists, sales and marketing business information and trade secrets, which are acquired by one party from the other during the term of these Terms (Confidential Information).
- (b) Neither party may disclose to any person or entity or permit to be disclosed by any of its employees, officers, directors or agents, any Confidential Information of the other party except for disclosures authorised in writing by appropriate officers of the disclosing party.
- (c) The restriction on disclosure will not apply if such information is ascertainable from the public domain, published information from trade sources by non-default of any party. Both parties agree that all terms of these Terms are to remain confidential.
- (d) The parties note that these Terms is also covered by any pre-existing non-disclosure agreement that has been duly signed by the parties.
- (e) Clause 15 in its entirety will survive termination of these Terms.

16. NO RELATIONSHIP

Nothing contained or implied in these Terms will create a joint venture, partnership or principal and agency relationship between Device Technologies and the Supplier.

17. SEVERABILITY

Any illegality, unenforceability or invalidity of any provision of these Terms will not affect the legality, enforceability or validity of the remaining provisions of these Terms.

18. WAIVER

Failure of either party to insist in any instance upon strict performance by the other of any provision of these Terms will not be construed or deemed to be a permanent waiver of such or any other provision of these Terms. Device Technologies' rights and remedies will be cumulative and may be exercised singularly or concurrently.

19. PPSA

- (a) If any transaction contemplated by these Terms gives rise to a security interest for Device Technologies under the PPSA then this clause 19 applies.
- (b) In this clause "PPSA" means *Personal Property Securities Act 2009* (Cth) and "security interest" and "perfected" have the meanings given to them in the PPSA.
- (c) To the extent permitted by the PPSA:
 - (i) all provisions of the PPSA listed in sections 115(1) and 115(7) other than sections 117, 118, 134 and 135, are excluded in full and will not apply;
 - (ii) the Supplier waives its right to receive each notice which section 157(3) permits to be waived;
 - (iii) the Supplier waives its right to receive anything from Device Technologies under section 275 of the PPSA and agrees not to make any request of Device Technologies under that section.
- (d) For the purposes of section 275 of the PPSA, the information of the kind mentioned in section 275(1) of the PPSA must not be disclosed by the Supplier except where required by section 275(7) of the PPSA.
- (e) The Supplier, when requested to do so by Device Technologies, must do all things requested of it to ensure that these Terms and any security interest granted under it is fully effective, enforceable and perfected with the priority required by Device Technologies.

20. ASSIGNMENT

The Supplier may only assign any of its rights under these Terms with Device Technologies' prior written consent.

21. GOVERNING LAW

These Terms are governed by and will be construed in accordance with the laws of New South Wales. Any legal action or proceeding against Device Technologies shall be brought exclusively in the courts of New South Wales and of the Commonwealth of Australia, and the Purchaser agrees to submit to the personal and exclusive jurisdiction of such courts.

22. LEGISLATION AND COMPLIANCE

- (a) These Terms are governed by Australian law, including but not limited to the *Therapeutic Goods Act 1989* (Cth) *Personal Property Securities Act 2009* (Cth), *Competition and Consumer Act 2010* (Cth) and the *Privacy Act 1988* (Cth) ("Acts"), as amended from time to time. Any capitalised words, used in these Terms, but not defined in these Terms will take on the meaning of such defined words in the Acts and if not defined in the Acts, then its ordinary meaning.
- (b) Device Technologies and the Supplier must comply with the relevant laws and policies, including and further assist in any investigation or audit as relevant to or in connection with these Terms, including, but not limited to the legislative requirements in the: *Modern Slavery Act 2018* (Cth); *Privacy Act 1988* (Cth); and Medical Technology Industry – Code

of Practice Edition 13 available at
<https://www.mtaa.org.au/code-of-practice>.

- (c) The Supplier must comply with the Supplier Code of Conduct.

ANNEXURE A - TERMS AND CONDITIONS - CONSIGNMENT OF GOODS

1. DEFINITIONS

"Consignment Stock" means the Goods specified in the Purchase Order placed on consignment by the Supplier to Device Technologies at a Device Technologies site.

2. TITLE AND RISK

- a) Title in the Consigned Stock will remain with the Supplier and only pass to Device Technologies upon use of the Consignment Stock by Device Technologies.
b) Risk of damage to or loss of the Consigned Stock (unless caused directly by the negligence of Device Technologies or a Device Technologies employee) will remain with the Supplier until the Consignment Stock is used by Device Technologies.

3. OBLIGATIONS OF SUPPLIER

- a) The Supplier will invoice all replacement Consigned Stock used within one (1) working day from receipt of Device Technologies Purchase Order;
b) The Supplier shall ensure replacement goods are dispatched promptly following receipt of Device Technologies Purchase Order; and
c) The Supplier shall conduct monthly (or as otherwise mutually agreed) stocktakes of the Consigned Stock at a time mutually agreed upon between the Device Technologies and the Supplier.

4. OBLIGATIONS OF DEVICE TECHNOLOGIES

Device Technologies must:

- a) hold the Consigned Stock on behalf of the Supplier;
b) store the Consigned Stock on the Device Technologies premises separately from all other goods of Device Technologies or any third party in such a way that they remain readily identifiable as the Supplier's property;
c) store the Consigned Stock in accordance with labelling and other manufacturer specifications, so as to maintain the Consigned Stock in a saleable condition ensuring product packaging remains unmarked and in original packaging;
d) use the Consigned Stock on a first expiring, first in and first-out basis;
e) within three (3) working days of any Consigned Stock being used, place a Purchase Order with the Supplier for Stock used and required replacement stock;
f) provide the Supplier access to the Consigned Stock at a time mutually agreed for the purpose of conducting monthly stocktakes; and
g) place a Purchase Order with the Supplier for any lost or damaged Consigned Stock.

5. PAYMENT TERMS FOR CONSIGNMENT STOCK

- a) The Supplier will invoice Device Technologies for all replacement Consigned Stock, delivery fees and applicable taxes.
b) Device Technologies will pay correctly rendered invoices for Consignment Stock within 30 days from date of invoice.