

## Trading Terms and Conditions For Sale of Goods

These Trading Terms & Conditions ("Terms") apply (unless otherwise previously agreed in writing) to the supply of Goods by Ecomed to a Customer from time to time. Any supply of Goods by Ecomed to the Customer made after the date of acceptance of these Terms is a supply pursuant to the supply agreement constituted by these Terms and the relevant order accepted by Ecomed and any such supply does not give rise to a new or separate agreement.

### 1. Interpretation

In these Terms unless the contrary intention appears:

**"Additional Charges"** includes all delivery, handling and storage charges, goods and services tax, stamp duty, interest, legal and other costs of recovery of unpaid money and all other government imposts and all money, other than the Purchase Price, payable by the Customer to Ecomed arising out of the sale of the Goods.

**"Customer"** means the person to or for whom the Goods are to be supplied by Ecomed.

**"Goods"** means the goods sold to the Customer by Ecomed and includes any services provided by Ecomed to Customer.

**"Ecomed"** means Ecomed Pty Ltd, ABN 37 001 415 336.

**"PPSA"** means the *Personal Property Securities Act 2009 (Cth)*

**"Purchase Price"** means the list price for the goods as charged by Ecomed at the date of delivery or such other price as may be agreed by Ecomed and the Customer prior to delivery of the Goods.

### 2. Order for Goods

2.1 An order given to Ecomed is binding on Ecomed and the Customer, if:

- 2.1.1 a written acceptance is signed for or on behalf of Ecomed; or
- 2.1.2 the Goods are supplied by Ecomed in accordance with the order.

2.2 An acceptance of the order by Ecomed is then to be an acceptance of these Terms by Ecomed and the Customer and these Terms will override any conditions contained in the Customer's order. Ecomed reserves the right to accept a part only of any order by notifying the Customer in writing or by delivering the Goods to the Customer. No order is binding on Ecomed until accepted by it.

2.3 An order which has been accepted in whole or in part by Ecomed cannot be cancelled by the Customer without obtaining the prior written approval of Ecomed, which it may refuse in its absolute discretion.

### 3. Warranties

3.1 Ecomed liability is limited to, to the extent permissible by law and at Ecomed's option;

3.1.1 in relation to the Goods:

- i. the replacement of the products or the supply of equivalent products
- ii. the repair of the products
- iii. the payment of the cost of replacing the products or of acquiring equivalent products; or
- iv. The payment of the cost of having the products repaired

- 3.1.2 Where the Goods are services:
  - i. the supply of service again; or
  - ii. the payment of the cost of having the services supplied again.
- 3.2 Any claims to be made against Ecomed for short delivery of Goods must be lodged with Ecomed in writing within 7 days of the delivery date.
- 3.3 To the extent permitted at law, all other warranties whether implied or otherwise, not set out in these Terms are excluded and Ecomed is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate Customer for:
  - 3.3.1 any increased costs or expenses;
  - 3.3.2 any loss of profit, revenue, business, contracts or anticipated savings;
  - 3.3.3 any loss or expense resulting from a claim by a third party; or
  - 3.3.4 any special, indirect or consequential loss or damage of any nature whatsoever caused by Ecomed's failure to complete or delay in completing the order to deliver the Goods.
- 3.4 The Customer acknowledges that they have relied on their own skill and judgment in relation to the Goods supplied to it by Ecomed.
- 4. **Delivery**
  - 4.1 The times quoted for delivery are estimates only and Ecomed accepts no liability for failure or delay in delivery of Goods. The Customer is not relieved of any obligation to accept or pay for Goods by reason of any delay in delivery. Goods may be delivered by instalments at the discretion of Ecomed.
  - 4.2 Risk in accepting the Goods passes on delivery to the Customer.
  - 4.3. All Additional Charges are payable by the Customer in addition to the Purchase Price of the Goods.
  - 4.4. Return of Goods will not be accepted by Ecomed except by prior agreement in writing with Ecomed. Any Goods returned will be subject to a restocking charge of 10% of the Purchase Price of those Goods plus any freight charges as required. Ecomed cannot accept any return of Goods which are incomplete, not in unopened packaging and/or not in original condition.
- 5. **Price and Payment**
  - 5.1 The Customer must pay the Purchase Price and the Additional Charges to Ecomed.
  - 5.2 If the Customer is in default, Ecomed may at its option withhold further deliveries or cancel a contract without prejudice to any of its existing rights.
  - 5.3 All payments are due within 30 days of the date of invoice. Interest is charged at the rate of 1.5% per month or part of a month from the expiry of that period until the date payment is received by Ecomed.
  - 5.4 All amounts payable by the Customer under these Terms must be paid without set-off or counter claim of any kind.

- 5.5 Ecomed may from time to time require the Customer to provide a non-refundable deposit or such other security as it may determine prior to delivery of the Goods.

## **6. Installation**

- 6.1 Ecomed shall only be responsible for the installation of the Goods where specified in its quotation or the accepted customer order.
- 6.2 Ecomed will notify the Customer of a date for installation and it will be the Customer's responsibility to ensure that the site is suitable and available for the installation by Ecomed and that the walls, the building, doors and all electrical wiring and other connections have been correctly prepared and are capable of having the Goods installed, affixed or fitted in on that date.
- 6.3 The Price for the installation of the Goods has been calculated by reference to the normal site conditions for installation and on the assumption that the structure, walls, doors, electrical wiring and other connections fixed or fitted have been properly and correctly designed for and are suitable without alteration, modification or addition for the installation of the goods.
- 6.4 The Customer is responsible for ensuring the location of the Goods is suitable and complies with any specifications or recommendations provided by Ecomed as well as all applicable environmental, safety and other regulations and laws.
- 6.5 If for any reason, including unsuitability of the site, Ecomed is unable to install the goods on the date of installation Ecomed will not be liable to the Customer in any way whatsoever for any loss which the Customer or any other person may suffer as a result of Ecomed's inability to install on the notified installation date. Ecomed will as soon as possible notify you of any delay or deferment of installation.
- 6.5 In the event of Ecomed being unable to install the Goods as a result of any act or omission by the Customer or due to any force majeure circumstances then, Ecomed will be entitled to charge the Customer an additional fee for any storage of the Goods as required together with all other costs incurred by Ecomed, which it would not otherwise have incurred had Ecomed been able to install the Goods.

## **7. Retention of Title**

- 7.1 Ownership, title and property in the Goods and in the proceeds of sale of those Goods remains with Ecomed until payment in full for the Goods and all sums due and owing by the Customer to Ecomed on any account has been made. Until the date of payment:
- 7.1.1 the Customer has the right to sell the Goods in the ordinary course of business;
- 7.1.2 until the Goods have been sold by the Customer in the ordinary course of the Customer's business, the Customer holds the Goods as bailee for Ecomed;
- 7.1.3 the Goods are always at the risk of the Customer.
- 7.2 The Customer is deemed to be in default immediately upon the happening of any of the following events:
- 7.2.1 if any payment to Ecomed is not made promptly before the due date for payment;

- 7.2.2 if the Customer ceases to carry on business or stops or suspends payment or states its intention of so doing or is unable to pay its debts as they fall due or if any cheque or bill of exchange drawn by the Customer payable to Ecomed is dishonoured;
- 7.3 In the event of a default by the Customer, then without prejudice to any other rights which Ecomed may have at law or under this agreement:
- 7.3.1 Ecomed or its agents may without notice to the Customer enter the Customer's premises or any premises under the control of the Customer for the purposes of recovering the Goods.
- 7.3.2 Ecomed may recover and resell the Goods;
- 7.3.3 if the Goods cannot be distinguished from similar Goods which the Customer has or claims to have paid for in full, Ecomed may in its absolute discretion seize all goods matching the description of the Goods and hold same for a reasonable period so that the respective claims of Ecomed and the Customer may be ascertained. Ecomed must promptly return to the Customer any goods the property of the Customer and Ecomed is in no way liable or responsible for any loss or damage to the Goods or for any loss, damage or destruction to the Customer's business howsoever arising from the seizure of the Goods.
- 7.3.4 In the event that the Customer uses the Goods in some manufacturing or construction process of its own or some third party, then the Customer must hold such part of the proceeds of sale of such manufacturing or construction process as relates to the Goods in trust for Ecomed. Such part will be an amount equal in dollar terms to the amount owing by the Customer to Ecomed at the time of the receipt of such proceeds. The Customer will pay Ecomed such funds held in trust upon the demand of Ecomed.
- 7.4 Separately, Customer hereby charges all its right, title and interest to and in the proceeds of sale of the Collateral as original collateral, or any of it, in favour of Ecomed.
- 8. PPSA**
- 8.1 Defined terms in this clause have the same meaning as given to them in the PPSA.
- 8.2 Ecomed and the Customer acknowledge that these Terms constitute a Security Agreement and entitle Ecomed to claim:
- (a) a Purchase Money Security Interest ("PMSI") in favour of Ecomed over the Collateral supplied or to be supplied to the Customer as Grantor pursuant to these Terms; and
- (b) a security interest over the proceeds of sale of the Collateral referred to in (a) as original collateral.
- 8.3 The goods supplied or to be supplied under these Terms fall within the PPSA classification of "Other Goods" acquired by the Customer pursuant to these Terms.
- 8.4 The Proceeds of sale of the Collateral referred to in clause 8.2(a) falls within the PPSA classification of "Account".

- 8.4 Ecomed and the Customer acknowledge that Ecomed, as Secured Party, is entitled to register its Security Interest in the Collateral supplied or to be supplied to Customer pursuant to these Terms and in the relevant Proceeds.
- 8.5 To the extent permissible at law, the Customer:
- 8.5.1 waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Customer to Ecomed.
  - 8.5.2 agrees to indemnify Ecomed on demand for all costs and expenses, including legal costs and expenses on a solicitor / client basis, associated with the;
    - 8.5.2.1 registration or amendment or discharge of any Financing Statement registered by or on behalf of Ecomed; and
    - 8.5.2.2 enforcement or attempted enforcement of any Security Interest granted to Ecomed by the Customer;
  - 8.5.3 agrees that nothing in sections 130 and 143 of the PPSA will apply to these Terms or the Security under these Terms;.
  - 8.5.4 agrees to waive its right to do any of the following under the PPSA:
    - 8.5.4.1 receive notice of removal of an Accession under section 95;
    - 8.5.4.2 receive notice of an intention to seize Collateral under section 123;
    - 8.5.4.3 object to the purchase of the Collateral by the Secured Party under section 129;
    - 8.5.4.4 receive notice of disposal of Collateral under section 130;
    - 8.5.4.5 receive a Statement of Account if there is no disposal under section 132(4);
    - 8.5.4.6 receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.
    - 8.5.4.7 receive notice of retention of Collateral under section 135;
    - 8.5.4.8 redeem the Collateral under section 142; and
    - 8.5.4.9 reinstate the Security Agreement under section 143.
  - 8.5.5 All payments received from the Customer must be applied in accordance with section 14(6)(c) of the PPSA.



## 9. Testing and Certification

The Customer must provide any government licenses, permits and approvals needed for installation and use of the Goods.

## 10. Use of Products

The Customer acknowledges that the Goods are or may be subject to regulation by the Australian Therapeutic Goods Administration, the New Zealand Medicines and Medical Devices Safety Authority, U.S. Food and Drug Administration and any other regulation that may be applicable in the countries where the end-users of the Goods are located. The Customer agrees not to use or permit the Goods to be used in any manner that does not comply with any and all such applicable regulations. Further, where the Customer is a reseller, it represents that will only re-sell the Goods to end-users who intend to use the Goods for diagnostic purposes only and that it will not re-sell the Goods to any other party for any other purposes.

## 11. Unauthorised Modification

Modifications to the Goods, or any of their components, could significantly affect their performance or conformance to applicable specifications. Any modification of the Goods, or any of their components, other than as performed or authorized in writing by Ecomed, will invalidate and terminate our warranty for the Goods, effective on the date of any such modification.

## 12. On-Sale

The Customer agrees that upon the on-sale of any Goods to third parties, it will:

- 10.1.1 inform any third party involved of these Terms;
- 10.1.2 inform any third party of Ecomed's product warranties if any; and
- 10.1.3 not make any misrepresentations to third parties about the Goods.

## 11. Intellectual Property

The Customer acknowledges that, unless otherwise agreed in writing, all intellectual property rights attaching to the Goods and any Ecomed branded products are and will remain the property of Ecomed.

## 12. Indemnity

To the full extent permitted by law, Customer will indemnify Ecomed and keep Ecomed indemnified from and against any liability and any loss or damage Ecomed may sustain, as a result of any breach, act or omission, arising directly or indirectly from or in connection with any breach of any of these Terms by Customer or its representatives.

## 13. General

- 13.1 These Terms are to be construed in accordance with the laws from time to time in the State of New South Wales and the Commonwealth of Australia. The parties submit to the non-exclusive jurisdiction of the Courts of New South Wales, Australia and any courts which may hear appeals from those courts in respect to any proceedings in connection with these Terms.

- 13.2 These Terms contain all of the terms and conditions of the contract between the parties and may only be varied by agreement in writing between the parties.
- 13.3 Any conditions found to be void, unenforceable or illegal may, to that extent be severed from the Agreement.
- 13.4 No waiver of any of these Terms or failure to exercise a right or remedy by Ecomed will be considered to imply or constitute a further waiver by Ecomed of the same or any other term, condition, right or remedy.

General Manager - Operations & Finance

