

RAPIDWARD AUSTRALIA PTY LTD

ABN 67 639 947 970

STANDARD TERMS AND CONDITIONS OF SALE

1 ENTIRE AGREEMENT

- 1.1 Subject to any variation under clause 24.12:
- (a) the Contract will be on these Standard Terms to the exclusion of all other terms and conditions (including, without limitation, any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document); and
 - (b) no terms or conditions endorsed upon, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document will form part of the Contract.
- 1.2 RAPIDWARD AUSTRALIA may revise these Standard Terms at any time by giving notice to the Customer and the revised standard terms will be immediately effective for all Orders made after notice has been given to the Customer.

2 ORDERS

- 2.1 Each order for Goods made by the Customer to RAPIDWARD AUSTRALIA shall be deemed to be an offer by the Customer to purchase Goods subject to these Standard Terms until it is accepted by RAPIDWARD AUSTRALIA.
- 2.2 RAPIDWARD AUSTRALIA may cancel the acceptance of any Order for Goods at any time before delivery. The Customer may only cancel an Order for Goods with RAPIDWARD AUSTRALIA's prior written consent.
- 2.3 By making an Order, the Customer acknowledges that it has read, understood, and agreed to be bound by the terms and conditions set forth in these Standard Terms.
- 2.4 When an Order is recorded in RAPIDWARD AUSTRALIA's order processing system and RAPIDWARD AUSTRALIA has generated an order number or track number on its system, a contract will be formed between the parties. A separate Contract is formed in relation to each Order.
- 2.5 The Customer can obtain the relevant order number or track number associated with an Order by requesting it from RAPIDWARD AUSTRALIA customer services.
- 2.6 To ensure safe handling and minimise breakages in transit some items are only supplied in "minimum order" packaging. Orders for less than the "minimum order" quantity will be rounded to the nearest "minimum order" quantity, and the Customer will be required to pay for all goods supplied, with such amount being the "Goods" under the Contract.
- 2.7 RAPIDWARD AUSTRALIA may withhold delivery of Goods (whether or not an Order has been accepted) for non-payment of any amounts due and payable or a breach of these Standard Terms by the Customer.

3 CANCELLATION

If RAPIDWARD AUSTRALIA advises the Customer that it will be unable to deliver the Goods and, upon receipt of such notice by the Customer, the Contract will be terminated without incurring any liability.

4 PRICES

- 4.1 Unless otherwise agreed in writing, Goods will be invoiced in accordance with RAPIDWARD AUSTRALIA's prevailing price lists on RAPIDWARD AUSTRALIA's ordering processing system applicable at

the time that RAPIDWARD AUSTRALIA generates the relevant order number or track number on its system.

- 4.2 Prices are subject to change without notice.
- 4.3 GST:
- (a) All prices quoted or listed are exclusive of GST unless expressly indicated to the contrary.
 - (b) Where a payment or consideration for the Goods is not expressed to include GST, the Customer must pay, in addition to the payment or consideration expressed and without deduction or set off, an amount in respect of GST applicable to the supply by RAPIDWARD AUSTRALIA to the Customer.
 - (c) Payment of GST must be made at the same time as payment is due on the invoice for the Goods.
 - (d) RAPIDWARD AUSTRALIA must issue the Customer with a correctly rendered tax invoice for any amount collected on account of GST.

5 PAYMENT

- 5.1 Goods will be invoiced on dispatch or at any later time determined by RAPIDWARD AUSTRALIA.
- 5.2 Payment must be made to RAPIDWARD AUSTRALIA without set-off or deduction of any kind.
- 5.3 All payments payable to RAPIDWARD AUSTRALIA under the Contract shall become due immediately upon termination of the Contract despite any other provision.
- 5.4 If the Customer fails to pay an amount on the due date, all amounts then owing to RAPIDWARD AUSTRALIA immediately and automatically will become due and payable. The Customer will pay RAPIDWARD AUSTRALIA interest on all overdue amounts calculated daily from the due date for payment at the rate which is 4% above the Reserve Bank of Australia's Interbank Overnight Cash Rate.

6 DELIVERY TERMS AND CHARGES

- 6.1 Delivery occurs when possession or control of the Goods passes to the Customer, its agent or carrier, at the Customer's premises or any other location agreed between the Customer and RAPIDWARD AUSTRALIA.
- 6.2 A receipt for the Goods signed on behalf of the Customer will be conclusive evidence of delivery.
- 6.3 Any dates specified by RAPIDWARD AUSTRALIA for delivery of the Goods are intended to be an estimate only. Time for delivery shall not be made of the essence.
- 6.4 RAPIDWARD AUSTRALIA may make partial deliveries or deliveries by instalments in any amount it may determine and each such partial delivery or delivery by instalments shall be deemed to be a separate Contract and these Standard Terms shall apply to each partial delivery or delivery by instalments as if such partial amount comprised the "Goods" under the Contract.
- 6.5 The Customer must notify RAPIDWARD AUSTRALIA within 2 days of delivery of any shortfall in or loss or damage to Goods delivered or it will be deemed to have accepted the Goods and cannot return the Goods in accordance with clause 10.
- 6.6 Where an Order has more than one scheduled delivery, each separate delivery may incur a handling and administration fee.

6.7 If the Customer requests express freight of Goods or any non-standard form of delivery, the Customer will be responsible for the freight/delivery costs and such costs will be added to the invoiced costs and be payable at the same time.

7 RISK/TITLE

7.1 the Goods shall pass to the Customer at the time when the Goods are delivered to the Customer.

7.2 Title in the Goods passes to the Customer when RAPIDWARD AUSTRALIA has received (in cash or cleared funds) the price for the Goods in full together with any additional charges as set out in the relevant invoice and any interest due.

8 RECOVERY OF GOODS

8.1 Until title of the Goods has passed to the Customer, the Customer must:

- (a) hold the Goods on behalf of RAPIDWARD AUSTRALIA;
- (b) store the Goods (at no cost to RAPIDWARD AUSTRALIA) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as RAPIDWARD AUSTRALIA's property;
- (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- (d) maintain the Goods in satisfactory condition insured on RAPIDWARD AUSTRALIA's behalf for their full price against all risks to the reasonable satisfaction of RAPIDWARD AUSTRALIA. On request the Customer shall produce the policy of insurance to RAPIDWARD AUSTRALIA.
- (e) Where payment is overdue in whole or in part for any of the Goods, RAPIDWARD AUSTRALIA or its nominee may (without prejudice to any of its other rights) recover and/or resell the Goods and may enter the Customer's premises or any other place where the Goods are stored by the Customer for that purpose without being liable for any loss or damage caused.

8.2 The Customer grants to RAPIDWARD AUSTRALIA an irrevocable license and authority to enter the Customer's premises to recover the Goods, provided that RAPIDWARD AUSTRALIA may only recover and resell for its own account sufficient of the Goods to satisfy all the Customer's unpaid liabilities in respect of the Goods and cost of resale.

8.3 The Customer may resell the Goods before title has passed to it solely on the following conditions:

- (a) any sale shall be effected in the ordinary course of the Customer's business at arm's length; and
- (b) any such sale shall be a sale of RAPIDWARD AUSTRALIA's property on the Customer's own behalf and the Customer shall hold the proceeds on account for RAPIDWARD AUSTRALIA.

9 PPSA

9.1 If RAPIDWARD AUSTRALIA determines that the Contract is or contains a security interest for the purposes of the PPSA, the Customer agrees to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which RAPIDWARD AUSTRALIA asks and considers necessary for the purposes of:

- (a) ensuring that the security interest is enforceable, perfected and otherwise effective; or
- (b) enabling RAPIDWARD AUSTRALIA to apply for any registration, or give any notification, in

connection with the security interest so that the security interest has the priority required by RAPIDWARD AUSTRALIA; or

- (c) enabling RAPIDWARD AUSTRALIA to exercise rights in connection with the security interest.

10 RETURNS

10.1 RAPIDWARD AUSTRALIA will accept return of the Goods at the sole discretion of RAPIDWARD AUSTRALIA.

10.2 The Customer is responsible for all costs of delivery applicable to the return of the Goods to RAPIDWARD AUSTRALIA, unless RAPIDWARD AUSTRALIA agrees that the Goods are defective.

10.3 In the event the Customer returns non-defective Goods, RAPIDWARD AUSTRALIA reserves the right to charge a restocking fee on Goods returned, at a rate of 50% of invoiced cost.

11 STORAGE, HANDLING AND USE OF GOODS

11.1 It is the Customer's responsibility:

- (a) to ensure that all applicable health and safety regulations and therapeutic goods requirements are observed and other appropriate steps taken in relation to the storage, handling, sale and the use of the Goods once they are delivered to the Customer; and
- (b) where information is supplied to the Customer on potential hazards relating to the Goods, to bring such information to the attention of its Personnel, sub-contractors, visitors and customers.

11.2 Without prejudice to the foregoing, it is also the Customer's responsibility to provide safe facilities for the reception of Goods into storage.

12 COUNTERFEIT GOODS

12.1 The Customer acknowledges that there are safety and regulatory concerns in relation to medical products that are counterfeit or not approved or packaged for sale in the country of the Customer. To safeguard the welfare of patients and the reputation of RAPIDWARD AUSTRALIA and its Affiliates, and the reputation of the products of RAPIDWARD AUSTRALIA and its Affiliates, the Customer warrants it will only purchase RAPIDWARD AUSTRALIA's products from RAPIDWARD AUSTRALIA or its authorised distributors while the Customer has an active account with RAPIDWARD AUSTRALIA.

12.2 The Customer shall not alter, remove or in any way tamper with any of the trade or other marks or numbers of RAPIDWARD AUSTRALIA attached to or placed upon the Goods.

12.3 RAPIDWARD AUSTRALIA may refuse to continue to supply its products to the Customer if RAPIDWARD AUSTRALIA considers on reasonable grounds that the Customer has breached this clause 12. Any such refusal will be without prejudice to RAPIDWARD AUSTRALIA's rights to claim damages and indemnities from the Customer.

13 USE AND RESALE OF GOODS

13.1 Goods purchased in Australia may only be used or resold in Australia. The Customer agrees that it is buying the Goods for its own internal use only and not for resale to any third party.

13.2 Where the Customer supplies Goods to any other person in the course of trading, the Customer must not give or make any undertaking, assertion or representation in relation to the Goods without RAPIDWARD AUSTRALIA's prior written approval. In any event, the Customer must not make

- any representations or advertise the Goods in any way contrary to any laws including any health and safety regulations and therapeutic goods requirements and must not make any representations or advertise the Goods in a way which promotes or suggests the unauthorised use of products.
- 14 PRODUCT RECALLS**
In the event that any of the Goods are subject to a recall, field safety alert or hazard alert by either (i) RAPIDWARD AUSTRALIA or (ii) any governmental agency or regulatory authority, the Customer will take all reasonable steps to assist with (including identification of any party to whom the Goods have been supplied by the Customer) and will comply with any reasonable directions given by RAPIDWARD AUSTRALIA in respect of such matter.
- 15 SINGLE USE PRODUCTS**
The Customer acknowledges that a Single-Use Product may be used once only and no right or license is conveyed with respect to such Single-Use Products beyond the right to use the products once and only once.
- 16 CEASING SUPPLY**
RAPIDWARD AUSTRALIA may cease to supply Goods on to the Customer on 5 days written notice.
- 17 INDEMNITY**
The Customer indemnifies RAPIDWARD AUSTRALIA and its Personnel, and its Affiliates and their Personnel, against any and all cost, expense, damage, judgment, liability or loss (including consequential loss, loss of profit and loss of expected profit) incurred directly or indirectly as a result of or in connection with any claim, demand or cause of action asserted or brought by a third party in relation to or arising from any negligent act or omission, unlawful conduct or other misconduct by the Customer or its Personnel relating to the Contract or the Goods.
- 18 WARRANTIES**
- 18.1 Other than as specifically set out in these Standard Terms, all warranties implied by statute or law are excluded to the full extent permitted by law.
- 18.2 RAPIDWARD AUSTRALIA warrants that if any of the Goods are therapeutic goods for the purposes of the *Therapeutic Goods Act 1989* (Cth), that such goods are registered, listed or included (as the case may be) on the Australian Register of Therapeutic Goods.
- 18.3 When purchased by a Consumer, the Goods come with consumer guarantees that cannot be excluded under the Australian Consumer Law (ACL). In this case, the Customer is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. The Customer's rights under this clause 18 are in addition to any statutory rights it may have as a consumer.
- 19 LIMITATION OF LIABILITY**
- 19.1 To the extent permitted by law, the liability of RAPIDWARD AUSTRALIA for a breach of a warranty or condition under this agreement or implied by statute or law about the Goods sold, is at the option of RAPIDWARD AUSTRALIA, limited to:
- the replacement of the Goods;
 - the supply of equivalent Goods;
 - repair of the Goods;
 - payment of the cost of replacing the Goods;
 - payment of the cost of acquiring equivalent Goods; or
- payment of the cost of having the Goods repaired.
- 19.2 Under no circumstances will RAPIDWARD AUSTRALIA be liable for any consequential or indirect loss, direct or indirect loss of profits, loss of business or any special or exemplary damages suffered or incurred in connection with the Contract or the Goods or any party's actions or omissions under the Contract.
- 20 INTELLECTUAL PROPERTY**
- 20.1 The Customer is not permitted to use any of RAPIDWARD AUSTRALIA's or its Affiliates' intellectual property for any purpose without the prior written consent of RAPIDWARD AUSTRALIA or any of its Affiliates.
- 20.2 No right, title, interest or license in any of RAPIDWARD AUSTRALIA's or its Affiliates' intellectual property is granted to the Customer under the Contract.
- 21 FORCE MAJEURE**
The parties shall be excused for delays in performance or failure of performance (except payment of amounts due) to the extent arising from causes beyond such party's reasonable control, including without limitation, strikes, wars, fires, acts of terror or acts of God, such as floods and earthquakes. In the event of any such event or condition, the party whose performance is excused shall notify the other party as soon as practicable and shall make diligent efforts to perform its obligations at its earliest opportunity.
- 22 CONFIDENTIALITY**
The Customer shall keep in confidence and shall not, without securing RAPIDWARD AUSTRALIA's prior written consent, originate any publicity (including any news release or public announcement) or disclose to any third party any Confidential Information, except:
- to its employees or representatives requiring the information for the purposes of the Order, provided they are made aware of these restrictions; or
 - if the Customer is required to do so by law or by a stock exchange (except this does not permit the Customer to disclose any information of the kind referred to in section 275(1) of the PPSA unless section 275(7) of the PPSA applies); or
 - if the Customer is required to do so in connection with legal proceedings relating to the Goods or the Contract.
- 23 DISPUTE RESOLUTION**
- 23.1 Nothing in this clause prevents a party seeking urgent injunctive or similar interim relief from a court.
- 23.2 If a dispute arises between the parties in connection with the Contract, the parties undertake in good faith to use all reasonable endeavours to settle the dispute by way of good faith negotiation (including escalating the dispute to executive level).
- 24 GENERAL**
- 24.1 **(include)** The verb "include" (in all its parts, tense and variance) is not used as, nor is it intended to be interpreted as, a word of limitation, and the words "including", "for example" or "such as" do not limit what else is included.
- 24.2 **(person)** The word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any government agency.
- 24.3 **(successors)** A reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
- 24.5 **(singular includes plural)** The singular includes the plural and vice versa.

- 24.6 (**headings**) all headings in these Standard Terms are for reference purposes only and do not define, limit or in any way affect the meaning or interpretation of these Standard Terms.
- 24.7 (**legislation**) a reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it.
- 24.8 (**time**) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusively on that day.
- 24.9 (**notices**) Notices, consents and other communications in connection with the Contract must be in writing and sent to an electronic mail address, hand-delivered or sent by pre-paid post to the other party's representative identified in the Contract. Notices take effect as follows:
- (a) electronic mail address - at the time of receipt of the electronic communication which is the time when the electronic communication becomes capable of being retrieved by the addressee; it is to be assumed that the electronic communication is capable of being retrieved by the addressee when it reaches the addressee's electronic address;
 - (b) delivery – at the time the delivery is made; and
 - (c) pre-paid post – one Business Day after posting.
- 24.10 (**assignment**) The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of RAPIDWARD AUSTRALIA.
- 24.11 (**no exclusivity**) The relationship between the parties is not one of exclusivity.
- 24.12 (**waiver/amendment**) Subject to clause 1.2, the terms of these Standard Terms may only be amended by agreement of the parties in writing which specifically refers to this clause 24.12. Any variation to these Standard Terms or representations about the Goods which do not satisfy this clause 24.12 shall have no effect. A waiver of rights under this agreement shall only be effective if given in writing to the other party and specifically refers to this clause 24.12.
- 24.13 (**exercise of rights**) RAPIDWARD AUSTRALIA may exercise a right, remedy or power in any way RAPIDWARD AUSTRALIA considers appropriate. If RAPIDWARD AUSTRALIA does not exercise a right, remedy or power at any time, this does not mean that RAPIDWARD AUSTRALIA cannot exercise it later.
- 24.14 (**survival**) Any term of these Standard Terms and the Contract survives the expiry, cancellation or termination of the Contract if required to give effect to it.
- 24.15 (**severability**) If the whole or any part of a provision of these Standard Terms is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of these Standard Terms has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of these Standard Terms or is contrary to public policy.
- 24.16 (**no partnership**) Nothing contained or implied in these Standard Terms or the Contract will create a joint venture, partnership or principal and agency relationship between the parties and neither party will represent that it is the joint venture, the partner, principal or the agent of the other party and neither party will have power to bind or obligate the other party in any manner whatsoever.
- 24.17 (**construction**) No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, these Standard Terms or any part of it.
- 24.18 (**PPSA notice**) Neither party need give any notice under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.
- 24.19 (**governing law**) The laws of the New South Wales, Australia will govern the Contract and the parties submit to the exclusive jurisdiction of the courts of New South Wales, Australia.
- 25 INTERPRETATION**
- 25.1 In these conditions the following words have the following meanings:
- “**Affiliate**” has the meaning given to the term “related body corporate” in the Corporations Act 2001 (Cth).
- “**Business Day**” means any day except Saturday or Sunday or a day that is a public or bank holiday throughout New South Wales, Australia.
- “**Confidential Information**” means all confidential, non-public or proprietary information, regardless of how the information is stored or delivered, exchanged between the parties relating to RAPIDWARD AUSTRALIA's business, technology or other affairs and includes the Contract and any pricing arrangements or discounts discussed or agreed by the parties.
- “**Contract**” means the contract for the supply of Goods between RAPIDWARD AUSTRALIA and the Customer on these Standard Terms formed in accordance with clause 2.4.
- “**Customer**” means the person(s), firm or company who purchases the Goods from RAPIDWARD AUSTRALIA.
- “**Goods**” means any goods agreed in the Contract to be supplied to the Customer by RAPIDWARD AUSTRALIA.
- “**Order**” means an order by the Customer to purchase Goods from RAPIDWARD AUSTRALIA, however made.
- “**Personnel**” of a party includes an employee, servant, agent, officer or director of that party.
- “**PPSA**” means the Personal Property Securities Act 2009 (Cth).
- “**RAPIDWARD AUSTRALIA**” means RapidWard Australia Pty Ltd (ABN 67 639 947 970).
- “**Single-Use Product**” means any product sold by RAPIDWARD AUSTRALIA that is labelled "For Single Use" or "Single Use Only" or "Not For Re-Use" or with language similarly indicating that the product is intended to be used once only.
- “**Standard Terms**” means the terms and conditions set out in this document.