

PRODUCT AND SERVICE SUPPLY TERMS – CONTRACT MANUFACTURING

"We, us or our" means the Pact entity supplying the Products or Services to you (as stated in our quote or invoice), and "you" or "your" means the entity ordering the Products and/or Services (as stated in the relevant credit application form or invoice). Capitalised terms have the meaning in clause 17.

1. Acceptance of Terms

1.1 You are bound by these Terms and any additional terms specified in our quotation each time you place an Order with us - unless you have signed a written supply agreement with us for the Products and/or Services, in which case that agreement applies. Any additional terms or conditions you include in an Order (or in any documentation) do not apply and are void.

2. Orders & Deliveries

2.1 **(Orders)** Each of your Orders must be accompanied by a purchase order number and comply with minimum order quantities notified by us. An Order is binding on us once we notify you that it is accepted. Subject to clause 13 (force majeure), you may not cancel an Order once accepted.

2.2 **(Delivery)** We will use all reasonable endeavours to deliver the Products and/or Services to the Delivery Location on or before the Delivery Date. You acknowledge:

- (a) we may deliver the Products in one or more lots and at different times and by separate shipments. Each lot must be accepted and paid for by you, notwithstanding any late delivery or non-delivery of any other lot; the quantity of Products delivered by us under an Order may vary by up to 10% of the quantity ordered. We will use reasonable endeavours to notify you of the quantity actually delivered prior to issuing an invoice; and
- (b) if you request delivery by a means other than our normal method of delivery, you must pay all additional costs we incur. If your requested means of delivery becomes impractical (as determined by us), we may choose another method.

2.3 You must ensure that you are able to take delivery of the Products and/or Services on or before the Delivery Date. If you are unable or unwilling to take delivery of an Order, then we may charge you for any costs of holding incurred, and hold the Products in stock for 45 days after which time we may, at our discretion:

- (a) continue to hold the Products and charge you reasonable storage costs;
- (b) invoice you and deliver the Products to the Delivery Location, even if you are not present or unwilling to accept the Products;
- (c) treat the Order as having been repudiated by you and invoice you for the Products plus other costs we reasonably incur, less any amounts we receive from a bona fide sale of the Products to a third party (provided that we will not sell any Products which bear your logo, trade mark or branding to a third party).

3. Forecasts

3.1 Where you provide us with forecasts of your demand for Products, you acknowledge that we rely on those forecasts to enable us to order sufficient raw materials and arrange our resources and production to meet those forecast requirements. As a result:

- (a) any stock of Products made to forecast and which is older than three (3) months from the date of manufacture may be invoiced to you; and
- (b) if we have purchased raw materials or other components in reliance on a forecast and you have not ordered Products requiring manufacture using those raw materials or components within 3 months of the relevant forecast, we may invoice you for their cost, including any surplus raw materials or components reasonably purchased by us in order to meet the manufacturer's minimum order quantities (unless we are able to use them for our other customers – as reasonably determined by us).

Such Products, raw materials and components will be delivered to you (at your cost) and title will pass to you on payment in full.

4. Prices & Payment

4.1 **(Price)** The Price for the Products and/or Services is as per our written quote (which expires after 30 days). We may update the quote at any time (prior to acceptance by you) if there is a change to our wages, materials or any other input costs.

Unless otherwise specified in the quote, all Prices are:

- (a) in Australian dollars for supplies in Australia, and New Zealand dollars for supplies in New Zealand; and
 - (b) quoted on a Delivery Duty Paid (DDP) basis and exclusive of GST.
- 4.2 **(Payment)** We will issue you with a valid tax invoice for the Price (usually on delivery). You must pay each invoice on or before the last business day of the month following the month of invoice, unless our quote stipulates other payment terms (e.g. cash on delivery).
- 4.3 **(Late Payment)** If you are regularly late paying your invoices (as reasonably determined by us), or you do not pay an invoice more than 5 Business Days after we issue a late payment notice, we will charge you Default Interest on the overdue amounts, as well as our reasonable costs of debt recovery.
- 4.4 **(GST)** If a party is liable to pay for a Taxable Supply, it will also pay the amount of any GST in respect of the Taxable Supply. All rebates, discounts or other reductions in price will be calculated on the GST exclusive price. Any amount to be reimbursed or indemnified in connection with an Order must be reduced by an amount equal to any corresponding input tax credit to which the party being reimbursed is entitled.
- ### 5. Risk & Title
- 5.1 **(Risk)** Risk in the Products passes to you in accordance with the relevant Incoterm. For example, for DDP, risk in the Products passes to you on delivery to the Delivery Location. To the extent permitted by law, we are not required to give you any notice of transport of Products by sea.
- 5.2 **(Title)** Title to the Products passes to you on your payment in full (in cleared funds). However, this does not prevent you from selling the Products in the normal course of your business before title passes. You must keep the Products separate from other goods so they are identifiable as supplied by us.
- 5.3 **(Pallets)** All pallets (used to deliver Products) are held at your risk on delivery, and you indemnify us for all costs incurred by us in relation to pallets which are lost, damaged or otherwise not returned in good condition. You must comply with all relevant third party pooling arrangements (e.g. CHEP) in relation to the pallets.
- 5.4 **(Tooling)** Where we agree any amortised tooling charges, the tooling remains our property unless otherwise agreed in writing.

6. Warranties

6.1 **(Pact Formulation Products)** Subject to clause 6.4, we warrant that Pact Formulation Products will on delivery and for the Warranty Period:

- (a) conform with their Specifications;
- (b) be of merchantable quality and fit for the purpose which those Products are intended to be used (as specified by us in writing); and
- (c) not infringe a third party's Intellectual Property Rights (unless the infringement is caused by your branding or by applying any of your other Intellectual Property Rights). If we breach this non-infringement warranty, we must (at our cost and as your sole remedy) promptly (i) procure for you the right to continue use of the Products; (ii) modify such Products so that they become non-infringing but otherwise meet your requirements; or (iii) replace such Products with non-infringing Products.

We also warrant that Pact Formulation Products will on delivery:

- (d) comply with all relevant laws and standards of Australia or New Zealand (depending on the agreed country of supply). However, you acknowledge that, unless otherwise agreed in writing, we do not warrant compliance with laws or standards of any other country, and your use or on-supply of Pact Formulation Products outside Australia or New Zealand is entirely at your own risk. You indemnify us for all Third Party Claims against us arising as a result of the supply of Pact Formulation Products outside Australia or New Zealand; and
- (e) be properly and safely packed and labelled so they are delivered to you in good condition.

- 6.2 **(Your Specification Products)** Subject to clause 6.4, we warrant that Your Specification Products will on delivery:
- conform with their Specifications; and
 - be properly and safely packed and labelled so they are delivered to you in good condition.
- 6.3 To avoid doubt, you are responsible for ensuring the Specifications you supply to us (in order for us to manufacture Your Specification Products):
- are appropriate to meet your product needs and intended use - as we do not give any fit for purpose warranty for Your Specification Products;
 - do not infringe the Intellectual Property Rights of any third party. You indemnify us for all Third Party Claims against us arising as a result of Your Specification Products violating a third party's Intellectual Property Rights; and
 - comply with all relevant laws and standards of any country in which they will be used or on-supplied.
- 6.4 **(Your storage, handling & use)** Once Products are delivered, you must ensure they are handled and stored appropriately (having regard to the nature of the Products) and used within relevant best-before or used-by dates. To the extent permitted by law, we are not liable for any loss of or damage to the Products (including any defect or non-conformance to Specifications), to the extent caused by the way you have handled or stored the Products, or for any use outside best-before or used-by dates. In particular, unless otherwise advised by us in writing, you must ensure that Products are stored in dry and cool conditions, away from direct sunlight.
- 6.5 **(Co-operation with investigations)** You must reasonably co-operate with our investigations in relation to allegedly defective Products, including by providing us with all information reasonably requested by us, and allowing us to inspect relevant Products and storage facilities.
- 6.6 **(Specification Tolerances & Changes)** Products will be deemed to comply with their Specifications if any variation is within the established industry tolerance. Should we be required to match any shade or colour, a light and dark tolerance will be allowed to such extent as agreed upon with you (at the time the standard colour is specified) or in the absence of any agreement a reasonable tolerance will be allowed. Unless we are manufacturing to a Specification provided by you, we may change or improve the Specification, and will use reasonable endeavours to give you advance notice. If this change to our Specification occurs after your Order, you may cancel your Order without penalty within 5 Business Days of being advised of the change.
- 6.7 **(Service Warranties)** We warrant that the Services will be performed in a professional and workmanlike manner in accordance with generally recognised industry standards for similar services. Any claim that the Seller has breached the obligation pertaining to the Services must be made within ninety (90) days after the performance of the applicable Services.
- 6.8 **(Implied Terms)** Where any applicable law implies a term, condition, or warranty into our supply of Products and/or Services to you (**Implied Term**), that Implied Term is excluded to the extent permitted by law. Where an Implied Term cannot be excluded, our liability will be limited (to the extent permitted by law) in accordance with clause 7.1.
- 7. Liability and insurance**
- 7.1 **(Our liability)** Subject to clause 7.2 and to the extent permitted by Consumer Law, our liability to you (whether arising in contract, negligence or otherwise) is limited to (at our option):
- In relation to Products:
 - the replacement of your Products or supply of Products which are equivalent;
 - the payment of the cost of replacing your Product or of the supply of an equivalent Product; or
 - refunding the amount of your Order for the Products; and
 - in relation to Services:
 - the resupply of those Services;
 - the payment of the cost of resupplying the Services or of the Supply of equivalent Services; or
 - refunding the amount of your Order for the Services.
- 7.2 The above limitation will not apply to:
- our liability for death, personal injury or tangible property damage to your premises, to the extent that liability is caused by our negligence or wilful misconduct, or to our liability for fraud; and
 - any liability which is not lawfully able to be excluded or limited under Consumer Law.
- 7.3 To the extent permitted by Consumer Law, we will not be liable to you (whether in contract, negligence or otherwise) for any loss of revenue or profits, goodwill or reputation, loss of or interruption to business, loss of production or any other indirect or consequential loss.
- 7.4 **(Mitigation)** Each party must act reasonably to mitigate the loss or damage it suffers under or in relation to an Order.
- 7.5 **(Insurance)** We hold public and product liability insurance of \$20million per occurrence and in the annual aggregate.
- 8. Intellectual Property Rights**
- 8.1 **(Pre-existing IP)** Each party at all times continues to own its pre-existing Intellectual Property Rights (**Pre-existing IP**). Nothing in these Terms transfers any Pre-existing IP of a party to the other. In particular, as between us and you:
- we continue to own all Intellectual Property Rights in Pact Formulation Products, including all of our Specifications, designs, manufacturing processes, procedures and trade secrets. You must not reverse engineer, replicate, copy or commercialise any of our Intellectual Property Rights. However, to the extent we apply any of your logos, trade marks or branding to Pact Formulation Products, these will continue to be owned by you under clause 8.1(c) below;
 - you continue to own all Intellectual Property Rights in the Specifications which you supply to us to manufacture Your Specification Products; and
 - each party will continue to own its own logos, trade marks and branding.
- 8.2 To the extent you require us to use any of your Pre-existing IP in manufacturing the Products:
- you licence us to use your Pre-existing IP as necessary for the relevant supply period for the purposes of manufacture and supply to you; and
 - you warrant that your Pre-existing IP does not violate a third party's Intellectual Property Rights, and you indemnify us for all Third Party Claims we suffer or incur as a result of your breach of this warranty.
- 8.3 **(Developed IP)** To avoid doubt, unless otherwise agreed in writing, we own all Intellectual Property Rights which we develop in supplying the Products – including all Intellectual Property Rights created in developing new formulations.
- 9. Artwork, Printing Plates, Dies & Tools**
- 9.1 Where you provide us with a mould, die, tool, printing plate or any other item used in the manufacturing process (**Your Tools**), you acknowledge that:
- we are not liable for any loss or damage of Your Tools– except to the extent caused by our gross negligence or wilful misconduct; and
 - we are responsible for all general maintenance of Your Tools, but you are responsible for the cost of refurbishments, end of life replacements and other similar significant expenses.
- 9.2 If any of Your Tools are no longer reasonably required to manufacture the Products (including where you have not ordered Products requiring use of Your Tools for a period we believe is unreasonably long), you must collect those items from us at your expense within 30 days of our notice. Where you do not do so, we may dispose of those items at your expense.
- 9.3 We will exercise reasonable care in printing any relevant Australian Product Number ("**APN**") symbol but we do not guarantee the accuracy or scanability of APN symbols.
- 9.4 We may provide written recommendations as to what statements and claims can be made in respect of the Products (including on product packaging) however we have no liability to the extent there is any deviation from these recommendations by you.
- 10. Therapeutic Products**
- 10.1 You must register, list or otherwise obtain approval for, any Products that are required by law to be registered, listed or otherwise approved by the TGA, as

- the Sponsor of the Product. We will enter into a separate GMP Agreement with you in relation to any such Products. To the extent there is any inconsistency between the terms of the GMP Agreement and these Terms, the GMP Agreement will prevail.
- 10.2 In this clause 10:
- (a) "ARTG" means the Australian Register of Therapeutic Goods maintained by the TGA.
 - (b) "GMP Agreement" means an agreement in relation to the quality and technical requirements for manufacture of a Product that reflects the principles of "good manufacturing practice".
 - (c) "Sponsor" means, as applicable, the sponsor of the listing on the ARTG and/or owner of any relevant approval from the TGA.
 - (d) "TGA" means the Therapeutics Goods Administration in Australia, Medsafe in New Zealand, or equivalent regulatory authority.
- 11. Confidentiality**
- 11.1 **(Confidentiality)** Each party must (a) strictly maintain the confidentiality of the other party's Confidential Information and only use it for the purposes of an Order and these Terms; and (b) only disclose Confidential Information of the other party to its Personnel (including those of its Related Bodies Corporate) who need to know for the purpose of exercising rights and obligations in relation to an Order and who are subject to confidentiality obligations in relation to that information. These confidentiality obligations do not apply to information that is required to be disclosed by law or the rules of a publicly recognised stock exchange.
- 12. Termination**
- 12.1 A party may terminate an Order where:
- (a) the other party is in breach of these Terms, and fails to remedy that breach within 21 Business Days of written notice of its breach; and
 - (b) to extent permitted by law, an application is made to a court to wind up the other party, or a receiver or administrator is appointed to manage the affairs of the other party.
- 12.2 Any rights or obligations in these Terms which by their nature are continuing, will survive termination or completion of an Order (e.g. obligations of payment, reimbursement, confidentiality, limitation of liability).
- 13. Force Majeure**
- 13.1 We are not liable for delay or non-performance of our obligations to the extent caused by a Force Majeure Event. We will notify you if we are impacted by a Force Majeure Event and use reasonable endeavours to overcome it. If a Force Majeure Event continues for a period of 60 days or more, either party may terminate the relevant Order.
- 14. Dispute Resolution**
- 14.1 Except where a party seeks urgent interlocutory intervention (e.g., injunction) or where we seek to recover an amount you owe us, before a party commences legal proceedings: (a) a party must send a written notice to the other clearly describing the claim / dispute (**Dispute Notice**), and (b) a senior manager of each party must attempt to resolve the issue in good faith.
- 14.2 If the dispute is not resolved within 30 days of the Dispute Notice, the parties will refer the dispute to mediation in Melbourne (with the parties to agree an appropriate mediator good faith). Each party will bear its own costs of the mediation (with the costs of the mediator to be shared equally).
- 14.3 If the dispute is not resolved within 90 days of the Dispute Notice (including as part of any mediation process), either party may commence legal proceedings.
- 15. Personal Properties Security Act**
- 15.1 If you fail to pay by the due date any amount owing to us, we may (without limiting our other rights) recover and resell any of the Products in which property has not passed to you. You authorise us to enter onto the premises where the Products are kept to take possession of the Products for that purpose at any time, and you indemnify us for our reasonable costs or liability incurred. We may only recover and resell for our own account sufficient Products to satisfy all unpaid liabilities, the costs of recovery and resale and any other costs or expenses recoverable under this Contract. If we recover any excess, we will not be liable in damages to you but must account for the excess in accordance with the PPSA or other applicable laws. If there is any inconsistency between our rights under this clause 15.1 and our rights under the PPSA, this clause prevails (to the extent permitted by law).
- 15.2 You acknowledge and warrant that we have a security interest (for the purposes of the PPSA) in the Products and any proceeds until title in the Products passes to you under clause 5.2. You must do anything reasonably required by us to enable us to register and maintain our security interest. Our security interest attaches to the Products when you obtain possession of them.
- 15.3 To the extent permitted by law, you agree that the following provisions of the PPSA will not apply in relation to our enforcement of a security interest:
- (a) PPSA – Australia: section 95 (notice of removal of accession) to the extent that it requires the Supplier to give a notice to the Purchaser; section 121(4) (enforcement of liquid assets – notice to grantor); section 130 (notice of disposal), to the extent that it requires the Supplier to give a notice to the Purchaser; section 132(3)(d) (contents of statement of account after disposal); section 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); section 143 (reinstatement of security agreement).
 - (b) PPSA – New Zealand: section 114(1)(a) (notice of sale of collateral), section 133 (debtor reinstatement of security agreement) and section 134 (limit on reinstatement of security agreement), and you waive your rights under sections 121 (persons entitled to notice may object to proposal), 129 (secured party must give notice of removal of accession), 131 (order concerning removal of accession) and 132 (entitled persons may redeem collateral).
- 15.4 We do not need to give you any notice under the PPSA (including a notice of verification statement) unless the notice is required by the PPSA and cannot be excluded. All payments for Products received from you must be applied in accordance with section the relevant provisions of the PPSA.
- 16. General**
- 16.1 **(Modern Slavery)** We will use our best endeavours to ensure no Modern Slavery is involved in supply of the Products, and we comply with all laws relevant to us relating to Modern Slavery.
- 16.2 **(Assignment)** You must not assign, novate or otherwise transfer an Order without our prior written consent.
- 16.3 **(No adverse construction)** To the extent permitted by law, nothing in these Terms is to be interpreted against a party solely because it drafted the Terms.
- 16.4 **(Laws)** These Terms and each Order will be governed by laws of Victoria, Australia for Products supplied in Australia, and laws of New Zealand for Products supplied in New Zealand.
- 16.5 **(Waiver)** The failure of a party to require performance of any obligation under these Terms is not a waiver of that party's rights.
- 16.6 **(Notices & Interpretation)** Any notices given under these Terms must be provided to each party using the contact details provided. Words importing the singular include the plural (and vice versa), and "including" means "including, without limitation".
- 17. Definitions**
- Business Days** means Monday to Friday, excluding public holidays in Victoria, Australia (for supplies in Australia) and in New Zealand (for supplies in New Zealand).
- Confidential Information** means information of a party that is by its nature confidential, including information about a party's pricing, processes, manufacturing methods and trade secrets, product designs and formulations, customers and strategy.
- Consumer** has the meaning under the relevant Consumer Laws.
- Consumer Law** means
- (a) in Australia, as set out in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*; and
 - (b) in New Zealand, as set out in the *Fair Trading Act 1986 (NZ)* and the *Consumer Guarantees Act 1993 (NZ)*, as well as any other relevant legislation in Australia or New Zealand dealing with the sale of consumer goods.

Default Interest means the 90 day Bank Bill Swap Bid Rate (as quoted on Reuters page BBSY at 10.45am) plus 2% commencing from the due date of payment (with interest accruing daily until all monies owing are paid in full).

Delivery Date means the date the Products and/or Services are to be delivered, as confirmed by us.

Delivery Location means the delivery location agreed by the parties in writing.

Force Majeure Event means any event or circumstance which is beyond our reasonable control, including acts of God and natural disasters, acts of war, terrorism, epidemic, general unavailability or failures of the internet or public utilities (e.g. electricity), breakdown of machinery (where not caused by gross negligence), denial of service attacks and other intentional acts of harm by third parties, strikes and industrial action, acts of any government or governmental agency, and international trade embargoes and restrictions.

GST has the meaning in: (a) for supplies in Australia - the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and (b) for supplies in New Zealand - *The Goods & Services Tax Act 1985*.

Incoterms means the latest version of the Incoterms issued by the International Chamber of Commerce.

Intellectual Property Rights means all rights (whether registered or unregistered) in respect of copyright, trade marks, patents, designs, protection of confidential information, circuit layouts, inventions, know-how, product or business concepts and any other identifiable result of intellectual endeavour, whether arising under statute or otherwise.

Modern Slavery means any form of coercion, threats, force or deception used to exploit any person, and undermine or deprive them of freedom (e.g., human trafficking, slavery, servitude, child labour, forced marriage, or debt bondage).

Order means each order for the Products and/or Services which you place with us.

Pact means Australian Pharmaceutical Manufacturers Pty Ltd ABN 87 100 038 720, Pascoe's Pty Ltd ABN 47 055 220 463, Jalco Group Pty Ltd ABN 39 075 091 806, and any Subsidiary of those entities.

Pact Formulation Products means:

(a) our existing products manufactured to our own existing formulation; or

(b) new products manufactured based on a new formulation developed by us,

and which are supplied to you either with our branding or with your branding (depending on what has been expressly agreed in writing).

Products means the products described in our quote or invoice, which will either be (a) Pact Formulation Products or (b) Your Specification Products.

PPSA means (a) for supplies in Australia - the *Personal Property Securities Act 2009 (Cth)*, and (b) for supplies in New Zealand - the *Personal Property Securities Act 1999*;

Price means the price for the Products and/or Services as set out in our quote or invoice.

Personnel means the employees, representatives, agents, officers, contractors and subcontractors of a party.

Related Body Corporate has the meaning given to that term in the *Corporations Act 2001*.

Services means the services described in our quote or invoice including but not limited to the development of any product specifications or formulations;

Specifications means the detailed specifications for the Products.

Subsidiary has the meaning given to that term in the *Corporations Act 2001*.

Taxable Supply has the meaning in the relevant GST legislation.

Terms means the terms and conditions in this document.

Third Party Claim means any claim, suit, action or demand by a third party, and will include all liability, cost, damage, expense, fine or penalty directly incurred by, or awarded against, an indemnified party in relation to the above.

Warranty Period means the warranty period agreed with you in writing for the Products. If no warranty period is expressly agreed, it will be our specified shelf life for the Products.

Your Specification Products means products which are manufactured in accordance with detailed Specifications supplied by you.