

**MEDILINK PTY LTD
TERMS AND CONDITIONS**

MEDILINK PTY LTD ABN 58 050 540 700 including any of its subsidiary companies ("**Medilink**") offers to sell goods on the following terms and conditions ("**Conditions**").

1. INTERPRETATION

1.1 In these Conditions:

1.1.1 "**Purchaser**" means the purchaser of the Goods

1.1.2 "**Goods**" means any medical goods supplied by Medilink

1.1.3 "**Grantor**" means the grantor of any security interest in the Goods, and is usually the Purchaser

1.1.4 "**Warranty Period**" means the warranty period for the goods being in accordance with the manufacturer's warranty period.

1.2 Nothing in these Conditions shall be read or applied so as to exclude, restrict or modify or have the effect of excluding or modifying any condition, warranty, guarantee, right or remedy implied by law (including the *Competition and Consumer Act 2010*) and which by law cannot be excluded, restricted or modified.

2. GENERAL

2.1 The Goods sold and/or provided by Medilink are sold on these Conditions.

2.2 These Conditions (which may only be waived or amended in writing and signed by Medilink) shall to the extent of any inconsistency prevail over all and any conditions of the Purchaser's order.

3. QUOTATIONS

3.1 Unless previously withdrawn, a quotation from Medilink is open for acceptance within the period stated on the quotation or, where no period is stated, within thirty (30) days after the date shown on the quotation.

3.2 A quotation does not constitute an offer to sell and / or provide Goods but is an invitation to treat only.

3.3 Medilink reserves the right to refuse any order based on its quotation within seven (7) days after the receipt of a Purchaser's order. A contract shall be formed between Medilink and a Purchaser on the acceptance by Medilink of a Purchaser's order and not otherwise.

3.4 The Purchaser acknowledges that it will be bound by these Conditions.

4. PRICES

4.1 All prices quoted are exclusive of all taxes, insurance and transport which shall be the sole responsibility of the Purchaser, unless otherwise agreed in writing.

4.2 Prices for Goods will be charged at:

- 4.2.1 the price stated by Medilink on a non-expired quotation; or
- 4.2.2 where there is no quotation, the pricing at the date of dispatch.

5. **DELIVERY**

- 5.1 Medilink will deliver Goods purchased by the Purchaser to the Purchaser's nominated warehouse or location within the capital city in which the Purchaser predominantly carries on business, or to such other place as the Purchaser specifies and Medilink agrees.
- 5.2 The Goods shall be deemed to be delivered to the Purchaser at the time the Goods arrive at the Purchaser's premises.
- 5.3 If, due to any act, matter or thing beyond the control of the Medilink, the address for delivery is unattended, delivery cannot otherwise be effected or the Goods cannot be dispatched, Medilink, in its sole discretion, may store the Goods at the Purchaser's risk and expense or take such other steps as it considers appropriate.
- 5.4 Goods are at the Purchaser's risk from the time of delivery. The Purchaser shall be responsible for arranging any insurance over the Goods after delivery.
- 5.5 If Medilink delivers the Goods then, unless otherwise agreed in writing by Medilink, the Goods must be unloaded by the Purchaser immediately on arrival at the specified destination.
- 5.6 Any disputes as to the proof of delivery shall be made within seven (7) days of delivery.
- 5.7 Medilink shall not be liable for any loss occasioned by delay in delivery of and / or the procuring of Goods, whether consequential or otherwise.

6. **PAYMENT**

- 6.1 Medilink' terms of payment are thirty (30) days from the date of the relevant invoice, unless otherwise stated on such invoice.
- 6.2 Medilink reserves the right to require payment with the order or satisfactory evidence of the ability of the Purchaser to pay for the Goods ordered by the Purchaser.
- 6.3 Interest at 10.00% per annum is payable on amounts which are more than thirty (30) days overdue.

7. **TRANSFER OF MONEY**

- 7.1 Medilink' terms of payment are thirty (30) days from the date of the relevant invoice, unless otherwise stated on such invoice.
- 7.2 Property in the Goods remains with Medilink until all monies owing to Medilink on any account have been paid or title in the property is vested in some other person by operation of law.
- 7.3 Until property in the Goods passes, the Purchaser shall keep them free from any charge, lien or other encumbrance.
- 7.4 Until Property in the Goods passes, the Purchaser shall:
 - 7.4.1 hold them on a fiduciary basis as bailee for Medilink;

- 7.4.2 keep them separate from all other goods in its possession and marked in such a way that they are clearly identified as the property of Medilink;
- 7.4.3 upon request deliver up such of them (as have not ceased to be in existence or resold) to Medilink (for which purposes our employees or agents may enter your premises) and the Purchaser is obliged to deliver up the Goods if so directed by Medilink in accordance with the enforcement procedures outlined in Chapter 4 of the *Personal Property Securities Act 2009*; and
- 7.4.4 not intermingle any sums it receives from any sale made by it or on its behalf of the Goods and shall hold such sums as trustee on behalf of Medilink and account fully to Medilink for such sums promptly as and when required by Medilink.

8. REGISTRATION OF SECURITY INTEREST

- 8.1 The Purchaser as Grantor, grants to Medilink, a security interest(s) in the Goods under the *Personal Property Securities Act 2009*. If applicable, this security interest(s) will be a purchase money security interest(s).
- 8.2 The Purchaser and Grantor (if different) acknowledge that Medilink may register the said security interest(s) in the Goods, at its discretion and that any related registration fees will be payable by the Purchaser.

9. WARRANTIES

- 9.1 Medilink Goods come with guarantees that cannot be excluded under the Australian Consumer Law. The Purchaser is entitled to a replacement or refund for a major failure. The Purchaser 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.
- 9.2 Medilink will, at its option either repair or replace any defective Goods or parts thereof with a new or remanufactured equivalent during the Warranty Period at no charge to the Purchaser for parts or labour during the Warranty Period.
- 9.3 The warranty described herein shall be the sole warranty granted by Medilink and shall be the sole remedy available to the Purchaser in addition to the rights and remedies of the Purchaser under a law in relation to the Goods to which this warranty relates.
- 9.4 All implied warranties including the warranties of merchantability and fitness are limited to the Warranty Period.
- 9.5 No other person or entity is authorised to make any warranties other than those described herein, or to extend the duration of any warranties beyond the Warranty Period on behalf of Medilink.
- 9.6 Correction of defects, in a manner and for the Warranty Period described herein, shall constitute complete fulfillment of all liabilities and responsibilities of Medilink to the Purchaser with respect to the Goods and shall constitute full satisfaction of all claims, whether based on contract, negligence and strict liability otherwise. In no event shall Medilink be liable, or in any way responsible, for any damages or defects in the Goods which were caused by repairs or attempted repairs performed by anyone other than Medilink.
- 9.7 This warranty does not apply to any appearance of the supplied Goods nor to any supplied Goods the exterior to which has been damaged or defaced, which has been subjected to misuse,

abnormal service or handling, or which has been modified or altered in design or construction. In addition, the warranty coverage does not apply to defects caused by the supplied Goods being subjected to the unauthorised modifications or connections, unauthorised opening or repair, repair by use of unauthorised parts, accident, force majeure, or other acts beyond the reasonable control of Medilink.

- 9.8 This warranty does not cover death or injury to persons resulting from any cause other than proven negligence of Medilink, its employees or representatives.
- 9.9 In order to enforce the rights under this warranty, the Purchaser must provide proof of purchase to Medilink. The proof of purchase must state the date of the purchase, provide a description of the Goods and the price paid for the Goods.
- 9.10 A claim made by a Purchaser should be made in writing to Medilink along with the proof of purchase. The costs of transportation of the Goods will be borne by the Purchaser. If the claim is valid Medilink will reimburse the Purchaser for the costs.

10. EXCLUSION OF LIABILITY

- 10.1 Medilink's liability for breach of a condition or warranty implied by operation of the *Competition and Consumer Act 2010* is hereby limited to:
 - 10.1.1 the replacement of Goods or the supply of equivalent goods;
 - 10.1.2 the repair of Goods;
 - 10.1.3 the payment of the cost of replacing Goods or of acquiring equivalent goods; or
 - 10.1.4 the payment of the cost of having the goods repaired.
- 10.2 Except as otherwise herein provided, Medilink shall not be liable or in any way responsible for incidental or consequential, economic or property damage, except where Medilink is in breach of the guarantees provided to the Purchaser in accordance with Schedule Two of the *Competition and Consumer Act 2010*, or applicable legislation from time to time provided always that nothing in this clause or elsewhere in these Conditions shall adversely affect the rights of the Purchaser under relevant legislation.

11. CANCELLATION OF ORDERS

- 11.1 Medilink's liability for breach of a condition or warranty implied by operation of the *Competition and Consumer Act 2010* is hereby limited to:
- 11.2 No order shall be cancelled or deferred without the prior written consent of Medilink.

12. RE-STOCKING CHARGE

- 12.1 Goods may only be returned with the approval of and at the sole discretion of Medilink.
- 12.2 Any Goods returned will be subject to a re-stocking charge of 20.00% of their invoiced value.

13. INTELLECTUAL PROPERTY

- 13.1 Goods offered for sale by Medilink may be the subject of patents, registered designs, trademarks or other proprietary and legal protection and the Purchaser will immediately notify Medilink of any suspected infringement of such rights.
- 13.2 To the best of Medilink's knowledge, goods sold do not infringe any patent, trademark, registered design or copyright of any third party.
- 13.3 The supply of Goods to the Purchaser does not constitute a transfer of any intellectual property rights in the Goods or any part thereof. The Purchaser must not do anything inconsistent with or in infringement of such intellectual property rights. Medilink does not warrant that the supply by it and the use by the Purchaser of the Goods does not and will not infringe the intellectual property rights of any third party.
- 13.4 The Purchaser indemnifies Medilink from and against any loss, damage, injury, cost, action, claim, demand or proceedings arising from or incurred by reason of, directly or indirectly, any infringement or alleged infringement of patents, registered designs, trademarks, copyright and / or any other industrial or intellectual property right in connection directly or indirectly with Medilink provision of the Goods.
- 13.5 The supply of goods by Medilink shall not confer any right upon the Purchaser to use any Medilink's trademark or trade name without Medilink's written consent, and at all times such marks or names remain the property of Medilink.

14. LEGISLATION

- 14.1 These Conditions are governed by the *Personal Property Securities Act 2009* and *Competition and Consumer Act 2010* ("**Acts**"), as amended from time to time.
- 14.2 Any capitalised words, used in these Conditions, but not defined herein shall take on the meaning of such defined words in the Acts and if not defined in the Acts, then its ordinary meaning.

15. SEVERANCE

- 15.1 If any of these Conditions are held by a Court of competent jurisdiction to be invalid or otherwise unenforceable, that provision may be, at the sole discretion of Medilink, severed from the Conditions and the remainder of these Conditions will continue to be effective and valid notwithstanding such severance.

16. OTHER MATTERS

- 16.1 The Purchaser must not without Medilink's prior written approval, assign or transfer or purport to assign or transfer this Contract or the benefit thereof to any person.
- 16.2 No indulgence or forbearance extended to the Purchaser shall limit or prejudice any right of claim by Medilink.
- 16.3 These Conditions are governed by and shall be construed in accordance with the laws of New South Wales.