



## Terms and Conditions

### 1 Supply of Products

- 1.1 The Practice may from time to time place an order for Products with Oventus using a completed Device Order Form (Order Request).
- 1.2 If Oventus notifies the Practice in writing that it accepts that Order Request, then the Device Order Form (including these product supply terms) form an agreement (the Order) under which Oventus agrees to sell the Practice the Products contemplated by that Order Request, and the Practice agrees to purchase the Products specified in that Order Request for the Product Price.
- 1.3 Each Order constitutes a separate agreement for the supply of the Products listed therein.
- 1.4 Oventus must endeavour to deliver or request a third party to deliver the Products listed in the Order at the Practice's cost.
- 1.5 The Practice acknowledges that any delivery dates nominated or agreed to by Oventus are indicative only, and are not binding on Oventus.
- 1.6 Oventus manufactures each product according to the patient information provided by the Practice. The Practice acknowledges that Oventus is not liable if a Product is not suitable for use as a result of incorrect information being provided, or the patient information changing prior to delivery of the Product. Oventus may charge an additional fee for any variation to a Product after an Order is accepted.
- 1.7 The Practice acknowledges that Oventus may supply the Products to any third party, and that the Practice is not the exclusive Practice of Oventus.

### 2 Practice obligations

- 2.1 The Practice must:
  - (a) make available adequate facilities, equipment, software and qualified personnel to ensure that the Products remain in good condition and are stored, handled and transported in accordance with the standards notified to the Practice by Oventus (if any), for example, in relation to safety, cleanliness or efficiency;
  - (b) before selling or using any of the Products, ensure that the Products and their packaging comply with all applicable laws including regulations, mandatory industry codes and standards, including any Australian Standards and Therapeutic Goods Administration requirements, and immediately notify Oventus if any of the Products or their packaging do not comply;
  - (c) only sell Products that are in good condition;
  - (d) comply with the requirements of any Product recall program initiated by Oventus or any government agency;
  - (e) if a user of an Oventus Product ceases to use the Product, use all reasonable efforts to recover the Product and return the Product to Oventus, or alternatively for the user to return the Product to Oventus directly;
  - (f) only use advertising materials prepared by or on behalf of Oventus or prepared by the Practice and approved by Oventus before use;
  - (g) comply with all advertising standards established by Oventus from time to time; and
  - (h) immediately remove and cease use of any material for which Oventus has revoked approval.
- 2.2 The Practice represents and warrants that the Practice (and each of its relevant servants or agents):
  - (a) is appropriately qualified and trained (including any training provided or mandated by Oventus from time to time) for the purpose of fitting a Product to a patient or otherwise dealing with the Product; and
  - (b) is covered by appropriate and current professional indemnity insurance (or equivalent) provided by a reputable insurer.

### 3 Product Price

- 3.1 Oventus will invoice the Practice for the Product Price as set by Oventus from time to time.
- 3.2 Unless otherwise specified, the Product Price is "ex works" and exclusive of freight or any other additional charges, which must also be paid by the Practice.
- 3.3 All payments are due 30 days net unless otherwise specified by Oventus in writing. Time is of the essence in relation to payment.
- 3.4 Without limiting any other remedies available to Oventus, if the Practice fails to pay any amount payable in respect of this Order then the Practice must pay Interest on that amount:
  - (a) at the rate which is 2% in excess of the published Australia and New Zealand Banking Group Limited variable interest rate for personal loans or, if lower, the maximum rate permitted by applicable law; and
  - (b) daily from the date on which such payment was due to the date on which the payment is made (both inclusive) including the relevant Interest.

*and Oventus may defer performance of this Order, or any other order placed by the Practice, until the outstanding amount is paid.*

#### 4 Retention of title and risk

- 4.1 In this clause 4, proceeds, security interest, purchase money security interest, financing statement and financing change statement have the respective meanings given to those terms by the PPSA.
- 4.2 Oventus retains title in the Products delivered in respect of this Order until the Practice has paid both the Product Price of the Products and all other money owed by the Practice to Oventus.
- 4.3 Oventus and the Practice intend this clause 4 to secure the Product Price of the Products and create a purchase money security interest in the Products. This Order may also create a security interest in the Products that is not a purchase money security interest.
- 4.4 Oventus may allocate payments made by the Practice to Oventus under this Order, or any other agreement with Oventus, to any obligation owed by the Practice to Oventus.
- 4.5 Risk in the Products passes to the Practice when the Products leave the manufacturing premises. Once risk has passed to the Practice, the Practice must insure the Products and keep them insured.
- 4.6 It is a condition of this Order that while the Products remain the property of Oventus, the Practice must not sell, lease, or otherwise dispose of the Products or grant or allow another to hold a security interest in the Products.
- 4.7 If the Practice fails to comply with any obligation under this Order, then without limiting the remedies available to Oventus:
- (a) Oventus may suspend manufacture or dispatch of any devices pending manufacture or delivery under this or any other Order; and
  - (b) Oventus may retain, sell or otherwise dispose of those Products without further obligation or liability to the Practice.
- 4.8 The Practice agrees to the extent permitted under the PPSA, the Practice has no right:
- (a) to receive notice of removal of an accession under the PPSA;
  - (b) under Chapter 4 of the PPSA; or
  - (c) under the PPSA to receive a copy of any verification statement or financing change statement under the PPSA.
- 4.9 The Practice must unconditionally ratify any actions taken by Oventus under clauses 4.7 and 4.8.

#### 5 Term and termination

- 5.1 Oventus may terminate the Order by giving 30 days written notice.
- 5.2 Termination of this Order will not affect any other order(s) made by the Practice.
- 5.3 On termination of this Order, accrued rights and remedies of the parties are not affected.
- 5.4 Termination of this Order will not affect clauses, 4, 5.2, 5.3, 6, 7, and 8 and any other clause of these product supply terms which is expressly or by implication intended to come into force or continue after termination.

#### 6 Liability and indemnity

- 6.1 Subject to law and clause 6.3, any liability of Oventus for any loss or damage, however caused (including by the negligence of Oventus), suffered by the Practice in connection with a Product is limited to, at Oventus's option, the Product Price paid by the Practice to Oventus for that Product, or resupply of that Product.
- 6.2 The limitation set out in clause 5 is an aggregate limit for all claims, whenever made.
- 6.3 Oventus is not liable for any consequential loss, including (without limitation):
- (a) loss of bargain;
  - (b) loss of revenues;
  - (c) loss of reputation;
  - (d) indirect loss;
  - (e) loss of profits;
  - (f) loss of actual or anticipated savings;
  - (g) lost opportunities, including opportunities to enter into arrangements with third parties; and
  - (h) loss or damage in connection with claims against the Practice by third parties,
- however caused (including by the negligence of Oventus), suffered or incurred by the Practice in connection with this Order.*
- 6.4 The Practice is liable for, and indemnifies Oventus from and against, all loss or damage (including legal costs) incurred or suffered by Oventus however caused in connection with:
- (a) any use or modification of the Products other than in accordance with the directions of Oventus;
  - (b) any breach of this Order by the Practice;
  - (c) any third party claims in relation to the Product;
  - (d) personal injury or death of any person (including any employee of the Practice) in connection with the provision or use of the Products; or
  - (e) damage to property in connection with the provision, resale or use of the Products.

6.5 The authorised signatory represents and warrants that they are duly authorised to place this Order and accept these product supply terms on behalf of the Practice.

## 7 Intellectual Property Rights

7.1 The Practice acknowledges and agrees that nothing in this Order grants the Practice any Intellectual Property Rights in the Products, Licensed Trade Marks or any other Intellectual Property Rights of Oventus.

7.2 The Practice must not modify the Products without the prior written consent of Oventus. If the Practice breaches this clause 7.2 and modifies any Product, the Practice assigns all Intellectual Property Rights (including future Intellectual Property Rights) in modifications or improvements to the Product to Oventus.

7.3 Oventus grants to the Practice a non-exclusive, revocable licence to use the Licenced Trade Marks in connection with the resale and marketing of the Products in accordance with the brand guidelines or directions provided by Oventus from time to time (if any).

7.4 In respect of any trade mark owned by or licensed to Oventus, the Practice must not (and must not authorise any third party to) use or trade under the trade mark, alter or deface any reproduction of the trade mark in any way, use a mark which is substantially identical or deceptively similar to the trade mark, or do or omit to do anything which may disparage or damage the goodwill or reputation of Oventus or the trade mark.

## 8 Privacy

8.1 Each party represents and warrants that it will comply and remain compliant with the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other relevant privacy legislation.

## 9 Taxes

9.1 In this clause 9:

*GST Act means A New Tax System (Goods and Services Tax) Act 1999 (Cth).*

*GST Act Supplier means the entity making the Supply (as that term is defined by the GST Act).*

*Progressive or Periodic Supply means a Taxable Supply that satisfies the requirements of section 156-5 GST Act.*

9.2 Subject to this clause 9, the Practice must pay all taxes, duties, government charges and other taxes of a similar nature (including fines, penalties and interest) imposed or levied in Australia or overseas in connection with the performance of this Order.

9.3 Any words capitalised in this clause 9 and not already defined in clause 11 have the meaning given to those words in the GST Act.

9.4 Except under this clause 9, the consideration for a Supply made under or in connection with this Order does not include GST.

9.5 If a Supply made under or in connection with this Order is a Taxable Supply, then at or before the time any part of the consideration for the Supply is payable:

- (a) the Recipient must pay the GST Act Oventus an amount equal to the GST for the Supply, in addition to and in the same manner as the consideration otherwise payable under this Order for that Supply; and
- (b) the GST Act Oventus must give the Recipient a Tax Invoice for the Supply.

9.6 For clarity, the GST payable under clause 9.5 is correspondingly increased or decreased by any subsequent adjustment to the amount of GST for the Supply for which the GST Act Oventus is liable, however caused.

9.7 If either party has the right under this Order to be reimbursed or indemnified by another party for a cost incurred in connection with this Order, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person entitled to the Input Tax Credit (if any).

9.8 Where a Tax Invoice is given by the GST Act Oventus, the GST Act Oventus warrants that the Supply to which the Tax Invoice relates is a Taxable Supply and that it will remit the GST (as stated on the Tax Invoice) to the Australian Taxation Office.

9.9 Where a Supply made under or in connection with this Order is a Progressive or Periodic Supply, clause 9.5 applies to each component of the Progressive or Periodic Supply as if it were a separate Supply.

## 10 General

10.1 The laws of Queensland govern these product supply terms and the Order. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland and courts competent to hear appeals from those courts.

10.2 The Practice must not assign, in whole or in part, or novate the Practice's rights and obligations under this Order without the prior written consent of Oventus.

10.3 Oventus may assign its interest under this Order.

10.4 Unless expressly stated otherwise, this Order does not create a relationship of employment, trust, agency or partnership between the parties.

10.5 Oventus may subcontract the performance of all or any part of Oventus's obligations under this Order.

10.6 A clause or part of a clause of this Order that is illegal or unenforceable may be severed from this Order and the remaining clauses or parts of the clause of this Order continue in force.

- 10.7 This Order supersedes all previous agreements about its subject matter. This Order embodies the entire agreement between the parties.
- 10.8 Each party acknowledges and agrees that it does not rely on any prior conduct or representation by the other party in entering into this Order.
- 10.9 A right under this Order may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in the waiver.

## 11 Definitions and interpretations

- 11.1 In these product supply terms, terms defined in the Device Order Form have the meaning given to those terms in the Device Order Form, and:

Intellectual Property Rights means all industrial and intellectual property rights, both in Australia and throughout the world, and includes any copyright, moral right, patent, trade mark, design, plant breeder's right, trade secret, knowhow, right in relation to semiconductors and circuit layouts, trade or business or company name, indication or source or appellation of origin or other proprietary right, whether registered or unregistered, or right of registration of such rights.

Licensed Trade Marks means the trademarks used by Oventus and approved for use by the Practice.

Device Order Form means a Device Order Form in a format acceptable to Oventus from time to time.

PPSA means the Personal Property Securities Act 2009 (Cth).

Practice means the practice entity specified in the Device Order Form.

Product means the Products made available by Oventus from time to time which as of the date of the Order are the Products in the Device Order Form.

Product Price in respect of a Product means the Product Price set by Oventus for purchase by clinicians and general medical service providers on a retail basis from time to time.