EP011

TERMS AND CONDITIONS OF SALE (AUSTRALIA)
ENCAPSULATE PHARMA PTY LTD



1.	**About these Terms and Conditions of Sale ("Terms")**
1.1	These Terms, together with our Application, form the entire agreement on which we, Encapsulate Pharma Pty Ltd (ABN 80640718289), sell and/or supply Goods to you. Each order you place with us for the sale and/or supply of Goods does not give rise to a new or separate agreement between you and us. If these Terms (or our Application) are amended, those amendments will also not give rise to a new or separate agreement between you and us.
1.2	These Terms should be read with and are in addition to our Privacy Policy.
1.3	Please read these Terms carefully as they will apply to all orders for Goods you place with us.
1.4	These Terms override any other terms and conditions (including your own), agreements, conditions, arrangements, understanding or requests concerning our sale and/or supply of Goods, unless we agree otherwise with you in writing. These Terms do not override or affect any legal obligations that you or we might have which cannot be excluded or limited by law.
2.	**Orders**
2.1	We have several ways that you can place orders for supply of goods with us. These include via email, phone or online ordering portal.
2.2	We will accept and supply Goods to an order received unless we notify you otherwise.
2.3	When you place an order for supply of Goods with us, you are declaring that you have all relevant permissions (including appropriate licences) to order such Goods. If we are of the opinion that you do not, we may stop current or further services to you until we are reasonably satisfied that we can recommence or continue to supply Goods to you.
2.4	You may not change, withdraw, cancel or revoke your order after we have accepted it without our written consent.
3.	**Purchase Price**
3.1	The price and description of Goods are as notified by Encapsulate Pharma Pty Ltd from time to time.
3.2	Prices for Goods are quoted in Australian Dollars.
3.3	The price of your order for Goods is confirmed when we confirm acceptance of your order in writing.
3.4	All prices are quoted by Encapsulate Health are exclusive of GST. The customer agrees to pay in addition to such amounts any applicable GST at the same time the Purchase Price is due.
3.5	If we become liable to pay GST on any supply made by us under these Terms, then you (as recipient of this supply) must pay us an additional amount equal to the GST payable on or for the supply.
3.6	The price of Goods usually includes freight charges but there may be additional freight charges if you ask for urgent delivery or another special request.
3.7	We shall deliver to you a valid tax invoice in respect of the supply and any GST payable at or before the time of payment.
4.	**Payment Terms**
4.1	You must pay for Goods you order on or before the Due Date.
4.2	If no Due Date is specified, payment is to be made by you on or before the 28th of the month following the month in which the Goods were supplied.
4.3	Payment is to be made by you in accordance with the payment method elected by you in your Application. This might include payment by: (a) credit card (if available in your location and only on prior approval by Encapsulate Pharma); (b) by direct transfer to our nominated bank account; or (c) any other manner that we have agree with you. You can elect to change your payment method in consultation with us from time to time.
4.4	A statement signed by us shall be conclusive evidence of the amount you owe us at that time, except in the case of manifest error.
4.5	We have no obligation to provide credit facilities to you. Our credit facilities are conditional upon us being and remaining satisfied with your financial history and, if we request, receiving guarantees and indemnities from you. You authorise us to

	enquire about your financial history, including obtaining reports from credit reporting agencies from time to time whilst you use our credit facilities.
4.6	If we offer you credit facilities, we may at any time by notice to you reduce, vary or terminate those facilities at our discretion. Any credit limit that may apply from time to time is for administrative convenience and solely for our benefit and does not constitute a term or condition of any agreement between you and us.
4.7	If you do not pay on time, we may: (a) charge interest on any unpaid amount at the rate of 10% p.a. until payment is made in full together with any GST due. (b) in addition to recovery of monies Encapsulate Pharma may suspend supply or delivery of any goods until payment is made in full. (c) Terminate, without Encapsulate Pharma incurring liability to the customer of the trading Account.
4.8	You may not withhold or set off any payment or make any deductions from any amount owing to us.
4.9	You may not factor or finance in any way any of your accounts receivable without our prior written consent.
5.	**Standard of Supply**
5.1	All performance and delivery times indicated by us are estimates only.
5.2	Where a delivery date for Goods is specified, we will endeavour to deliver within that time but in no circumstances will we be liable for any loss or damage of any kind whatsoever caused directly or indirectly by any delay or failure to deliver the Goods within the specified delivery date. Failure to deliver within the specified time will not give you a right to cancel or terminate your order or refuse to pay for the Goods
5.3	All Goods will be delivered by Encapsulate Pharma or its transport contractor to the delivery address and the Customer must accept the delivery upon arrival.
5.4	If you are unable or unwilling to accept delivery of the Goods then the risk in the Goods will pass to you from the time of such refusal. In such an event, we are entitled to payment for the Goods as if they were delivered to you and, in addition to any of our other rights and remedies (including the right to sell the Goods), we may in our discretion arrange to store the Goods at your expense.
5.5	We will not be liable for any loss or damage incurred by you as a result of delay in the performance or non-performance of any of our obligations under these Terms which is caused by any Force Majeure Event.
5.6	Our obligation to deliver will be discharged on the arrival of the Goods at your nominated delivery destination, the address appearing on your Invoice
6.	**Risk & Title**
6.1	Risk of damage, deterioration or loss of or to the Goods passes to you on the earlier of when they are delivered into your or your agents possession or control, when you pay for the Goods or pursuant to clause 7.3.
6.2	It is up to you to take out insurance over the Goods.
6.3	Ownership of Goods that we supply to you only passes to you when you have paid all amounts owing to us relating to the Goods and any other amounts that you might owe to us including under any other accounts or orders.
6.4	Until ownership of the Goods passes to you, you agree to store them in a way that clearly shows the interest of us in the Goods and separately from any other goods so that they do not become damaged or spoiled.
6.5	You irrevocably grant to us and our nominated representative an unrestricted right and licence without notice to enter any premises occupied or controlled by you where Goods are located and do any other things necessary to identify and inspect the Goods and your books and records on the Goods, and to repossess Goods, without in any way being liable to you or any other third party.
7.	**Claims & Returns**
7.1	You agree to the responsibility of inspecting the Goods immediately upon delivery.
7.2	To notify us that the Goods received do not conform with any Standard or they were damaged during transportation or delivery by us or do not match the description in the relevant order, you must contact us at customerservice@encapsulatepharma.com upon delivery within five business days of delivery of the Goods. You agree that these are reasonable times in which to contact us. If you do not give us notice within these times, the Goods will be deemed to have been delivered by us in accordance with the applicable order.
7.3	These Terms describe our claims and returns procedure. Contact us if you have any questions about these procedures or wish to know if any apply to you.
7.4	Subject to our claims and returns procedures, we will at our option: (a) credit the price of the relevant Goods to your account; or (b) collect the Goods from you and replace them, if we agree that the Goods were damaged during transportation or delivery by us, do not comply with the description on the relevant order or are non-compliant with any Standard.
7.5	Clause 7.4 only applies if: (a) the Goods have been properly handled, stored and maintained by you, any instructions given by us in relation to the Goods have been fully observed by you and any documentation given by us in relation to the Goods are retained with the Goods for so long as you are requested to do so (including for example a pedigree letter or short dated letter from us); (b) all packaging is intact, except where any packaging breakage is due to damage during transportation or delivery by us or was necessary to reveal the damage or non-compliance; (c) you give us a reasonable opportunity to inspect the Goods; and (d) you make no further use of the Goods after you discover or reasonably thought to have discovered that the Goods did not conform with a Standard or were damaged or did not comply with the description of the Goods in the relevant order unless we give you permission to do so.
7.6	Encapsulate Pharma does not provide credit, return or replacement for out of date goods.
8.	**Liability**
8.1	Under Australian Consumer Law, certain consumer guarantees may apply to the Goods and/or our services supplied pursuant to these Terms. You may have rights against us concerning such Goods and/or services as a result.

8.2	Nothing in these Terms excludes or limits the operation of any conditions, warranties or guarantees (express or implied) which cannot be excluded or limited by law.
8.3	If we are lawfully allowed to limit our liability to you in respect of the Goods and/or our services, our liability to you is limited, at our option (as the case may be), to the following: (a) in the case of Goods, the replacement, repair or payment of the cost of replacement or repair of the Goods; and (b) in the case of services, supplying the services again or payment of the cost of having the services supplied again.
8.4	To the extent permitted by law (a) our liability to you will not in any situation exceed the price of the Goods supplied by us; and (b) we will not be or become liable to you for any loss of profits, loss of sales, loss of market, loss of goodwill or reputation, third party claims, incidental or special damages or indirect or consequential loss of any kind, which may result from any warranty, guarantee, condition or term given under these Terms or any other applicable law.
8.5	Subject to these Terms and any applicable law, all conditions and warranties as to the quality of the Goods or their fitness for any particular purpose are expressly excluded (whether express or implied and even if that purpose is made known expressly or by implication to us or the Principals)
8.6	No sale under these Terms constitutes a sale by sample. You acknowledge that the sample may vary from the Goods produced.
8.7	No sale under these Terms constitutes a sale by description. Any description of Goods is by way of identification only. You acknowledge that you are liable for ensuring that the Goods are suitable for your intended use.
8.8	You agree to indemnify us against any claim, complaint, liability or cost that we incur either directly or indirectly as a result of any act or omission by you (or any person that you are responsible for) concerning these Terms, the Goods, us or your legal obligations, including but not limited to mercantile agent fees and commissions, and legal fees calculated on a solicitor/client basis of and incidental to us making demand of or bringing any legal proceedings against you in respect of the price of Goods or any other due and payable amount that is outstanding and unpaid.
9.	**Suspension, Cancellation & Termination**
9.1	We may immediately: (a) suspend or close your account with us; (b) suspend delivery of Goods or any current orders for the supply Goods; (c) cancel all or any part of any of your orders which remain unperformed; (d) repossess any Goods for which we have not received full payment, wherever they are located; (e) choose not to accept further orders for supply of Goods from you; and/or (f) require you to pay all amounts owing to us in connection with these Terms (even if the Due Date for any of those amounts has not yet passed), if: (a) we or you suffer a Force Majeure Event; (b) you suffer an Insolvency Event; (c) you breach or fail to perform or observe any of these Terms; (d) your account is suspended or closed for any reason; and/or (e) we are of the reasonable opinion that you are unable to pay your debts as and when they fall due and payable or you have suffered a material adverse change in your financial circumstances. Our taking of any of the above actions shall be at our discretion and shall not affect any other rights that we may have against you.
9.2	You may suspend or close your account with us at any time by giving us at least 14 days' prior written notice. We may also suspend or close your account at any time by giving you at least 14 days' prior written notice. Suspension or closure your account does not affect any rights or obligations that you or we may have against each other pursuant to these Terms or at law.
9.3	We shall not be liable for any loss or damage which you may incur as a result of any suspension and/or closure of your account.
10	**Communication & Notices**
10.1	You agree that we may communication with you electronically (for example when we want to give you information about your order or about Goods, or to send you invoices or statements). This will include by email.
10.2	Any notice required to be given by you or us under these Terms shall be valid if hand delivered or sent by registered post, express courier, fax or email to the other party using their contact details as set out in the Application (or as you or we may later notify each other in writing from time to time).
10.3	A notice shall be deemed received by the party to whom it is addressed: (a) if hand delivered, immediately upon delivery; (b) if sent by registered post, on the second business day following registration and posting; (c) if sent by express courier, immediately on the courier's receipt of a signature from the recipient evidencing delivery; and (d) if sent by fax or email, immediately upon sending (provided that no transmission error message is subsequently received). If delivery occurs on a non-business day or after 5pm on a business day, the notice will be deemed delivered on the next business day.
11.	**Personal Information & Privacy**
11.1	We respect your rights to privacy under the Privacy Act 1988 and we are required to comply with the Australian Privacy Principles and, in certain cases, the European Union General Data Protection Regulation (2016/679) in respect of the collection, use, disclosure and handling of personal information.
11.2	Our Privacy Policy contains information about how you may access personal information about you that is held by us and seek the correction of such information.

11.3	You acknowledge that Encapsulate Pharma Pty Ltd may collect personal and credit information in connection with our dealings with you in accordance with our Privacy Statement, Privacy Policy, Credit Reporting Policy and Statement of Notifiable Matters pursuant to the Credit Reporting Code, the Privacy Act 1988, the Privacy (Enhancing Privacy Protections) Act 2012, and the Australian Privacy Principles as amended from time to time. The lawful basis on which we process your data (or that of the data subject) is that you (or they) have consented, it is necessary for the performance of this contract, and for compliance with legal obligations in certain cases.
11.4	The criteria by which we determine the period for which your personal information will be stored include legal requirements for how long we need to store records and documents, how long you continue to order Goods from us, time limits under statutes of limitation and expiry of legal rights, our contractual obligations, and our need to facilitate and transact business in connection with these Terms.
11.5	You consent to personal and credit information in connection with our dealings with you being collected and used, and you warrant to us that you have obtained the consent of each patient, director, partner, officer or guarantor (as the case may be) to that information being collected and used. The purpose for which we are collecting and using it is: (a) to allow us to supply or deliver the Goods; (b) to take orders in connection with the Goods; (c) to comply with our obligations under these Terms; and (d) to otherwise facilitate and transact our business in connection with the Goods and these Terms.
11.6	You acknowledge and agree that we may disclose your information to our contractors, and other individuals or entities that we may engage with or be engaged by from time to time (including, occasionally, entities located outside of Australia).
11.7	Our approach to the management of your personal and credit information is consistent with the Privacy Act 1988, the Privacy (Enhancing Privacy Protections) Act 2012, the Australian Privacy Principles and the Credit Reporting Code as relevant.
11.8	You are not required to provide us with your personal information. However, if we are unable to obtain all your required personal and credit information, or if you do not provide all of the information that we request, we may reject or delay your Application (including any application of a third party such as a guarantor), cease our commercial relationship with you or choose not to provide you with Goods. Providing to us the personal information that we ask for (such as delivery addresses, consignee names etc.) is a requirement necessary to enter into these Terms and receive the Goods.
11.9	If you have any questions or concerns about our Privacy Policy, the type of information we may hold about you, or for corrections or complaints about a breach of your privacy, please direct your requests to the Privacy officer at privacy@encapsulatepharma.com
12.	**General**
	Governing Law
12.1	These Terms are governed by the laws applicable in the state of Victoria, Australia, and you and we agree to submit to the exclusive jurisdiction of the courts of Victoria, Australia.
	Amendments
12.2	We may from time to time amend these Terms (including our Application) and such amendments shall apply from the date of amendment. We will notify you if these Terms (or our Application) change. You will be deemed to have agreed to the change(s) if you continue to place orders for Goods after the date of amendment.
	Invalidity
12.3	If any part of these Terms are or become invalid, illegal or unenforceable, that part shall be deemed deleted from these Terms. All other parts of these Terms shall not be affected and shall remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid, illegal or unenforceable part.
	Assignment or Transfer by you
12.4	You may not assign, transfer or novate these Terms or any of its rights or obligations under these Terms without our prior written consent. We may assign, transfer or novate these Terms or any of our rights or obligations under these Terms without your prior written consent.
	No Waiver
12.5	Failure by us to enforce any provision of these Terms at any time shall not mean a waiver by us of that provision and shall not limit or waive our right to subsequently require compliance with all of these Terms.
13	**Definition & Interpretation**
13.1	In these terms (a) Application means our Application for Credit that you must complete before you can request that we sell and/or supply Goods to you. (b) Australian Consumer Law means Schedule 2 of the Competition and Consumer Act 2010 (Cth), as amended and in force from time to time; (c) Business Day means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made; (d) Cold Chain Goods means a Good which is required to be maintained at a specified temperature ; (e) Due Date means the date displayed on our invoices, statements, correspondence or any other documents at our direction for your payment of Goods. (f) Force Majeure Event means an act or event which is beyond the reasonable control of that party, including but not limited to acts of God, war, terrorism, civil disturbance, insurrection, acts of government, industrial actions or disputes), ï¬res, floods, natural disasters, accidents, pandemics, sabotage, criminal acts, embargoes, or delays in transportation attributable to third party carriers or customs authorities. (g) Goods means any goods, merchandise and services that are or (as the context requires) are proposed to be supplied by Us to You either in Our own right or on behalf of a Principal; (h) GST and related terms have the meanings given to those terms in A New Tax System (Goods and Services Tax) Act 1999 (Cth), as amended and in force from time to time; (i) Insolvency Event means action which places an entity or individual under external management in respect of its assets or where an entity or individual makes an assignment in respect of its assets for the benefit of its creditors, including

	but not limited to the appointment of a liquidator, receiver, manager, trustee or administrator, or where the entity or individual is unable to pay its/his/her debts as they fall due; (j) Standard means an applicable standard or specification in respect of particular Goods that is published by the manufacturer or wholesaler of the Goods or which is mandatory under applicable laws or both.
13.2	Reference to any legislation includes a modification, revision, amendment, re-enactment of, legislation enacted in substitution for, regulation, order-in-council or any other instrument from time to time issued, enacted or made under that legislation.
13.3	Reference to the singular includes the plural and the plural includes the singular
13.4	Reference to one gender includes the others.
13.5	Indemnities given in these Terms are unconditional, irrevocable and continuing indemnities.
13.6	The words “includes” and “including” and any variations of these are not words of limitation or exhaustive, but rather shall be deemed to be followed by the words without limitation.
13.7	Terms and expressions used in these Terms that are defined in the GST Act have the same meanings respectively given to those terms and expressions in that Act.