

INDEPENDENT PHARMACEUTICAL SUPPLIES STANDARD TRADING TERMS
(Effective on and from 1 November 2012)

1. DEFINITIONS

In these Terms the following words and phrases have the following meanings:

"**Community Pharmacy**" has the meaning given in the National Health Act (Cth).

"**CSO Distributor**" has the meaning given in The Operational Arrangements of the Community Service Obligation (CSO) Funding Pool (January 2009).

"**CSO Obligation**" has the meaning given in clause 2.1.

"**Forward Charge**" means where we allow additional time for payment of Goods.

"**Goods**" means any goods supplied or to be supplied by us to you on the Terms.

"**Insolvency Event**" means, if you are an individual: the commission of an act of bankruptcy as defined in the Bankruptcy Act 1966 (Cth); or if you cease to trade or become unable to pay your debts as and when they fall due.

"**Insolvency Event**" means, if you are a company: if any step is taken to appoint a receiver, administrator, liquidator or like controller to any or all of your assets; or if you cease to trade or become unable to pay your debts as and when they fall due.

"**Order**" means an order for Goods and/or Services.

"**Services**" means any services supplied or to be supplied by us to you on the Terms.

"**Discounts or Incentives**" are written offers to provide Goods or Services in a way that has been accepted to by you.

"**PBS**" means the Pharmaceutical Benefits Scheme as defined by the National Health Act (Cth).

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

"**Terms**" means these standard trading terms.

"**we**" means Symbion Pty Ltd ABN 25 000 875 034 trading as Independent Pharmaceutical Supplies ("us" and "our" have corresponding meanings).

"**you**" means a party requesting supply of Goods and/or Services.

2. FORMATION OF CONTRACT AND EXCLUSIVITY OF CONDITIONS

2.1 Nothing in these Terms and nothing in our policies changes any obligation that we have as an approved

CSO Distributor under our Deed of Agreement with the Commonwealth of Australia to access the Community Service Obligation Funding Pool ("CSO Obligation"). Where the CSO Obligation applies, any inconsistent parts in these Terms and our policies do not apply. The CSO Compliance Requirements and Service Standards are available at the Department of Health and Ageing website:
<http://www.health.gov.au/internet/main/publishing.nsf/Content/pharmacy-4cpa2#cs0>.

2.2 You acknowledge that each and every Order supplied to us:

(a) is a separate offer which we may accept or reject at our absolute discretion; and

(b) if accepted by us, gives rise to a binding agreement between you and us for the supply of goods and/or services on the Terms. ("**Contract**").

2.3 These Terms replace any other terms previously in force between you and us, subject to any specific written agreement between you and us.

2.4 We may vary the Terms at any time by written notice to you. Your continued purchase of Goods and/or Services after such notification constitutes acceptance and will evidence your consent to the provision of those Goods and/or Services on the Terms as varied. Where separate Discounts or Incentives are offered, they incorporate these Terms.

3. WARRANTIES

3.1 You warrant that you or the person making an Order on your behalf has sufficient power and authority to enter into a Contract with us on the Terms, including if you are contracting as trustee of a trust, that you are validly appointed with full capacity.

3.2 You warrant that no statement or representation made by you or on your behalf to us prior to entering into any Contract with us is misleading or deceptive in any respect, and you warrant that you will be truthful and accurate in your dealings with us for the term of each Contract.

3.3 You warrant that you will, as soon as practicable, notify us of any event including any pending or threatened event that could have an adverse effect on your ability to perform your obligations under a Contract.

3.4 Any application for credit by you will be on our Application For Credit (Commercial) Trading Account form ("**Application Form**"). You warrant that the contents of the Application Form are true and correct and you acknowledge that we rely upon its contents.

4. OUR FEES AND POLICIES

4.1 We reserve the right to charge service fees from time to time in the amounts and on the conditions listed in the most recent published pricing catalogue, or as otherwise notified in writing to you, from time to time.

4.2 Any:

- (a) goods returned to us must be returned in accordance with our relevant policy;
- (b) goods which are dated or expired may only be returned to us in accordance with our relevant policy;
- (c) goods that we buy in or procure on your behalf will be bought or procured for you in accordance with our relevant policy; and
- (d) claims for price adjustments must be done in accordance with the relevant policy;

as published in our most recent published pricing catalogue from time to time. These Terms and our Policies are also published in our "Doing Business Together" booklet which is updated from time to time.

4.3 You agree that the policies referred to in this clause 4 form part of the Terms.

5. OUR PRICES

5.1 Goods and/or Services are supplied at the price current at the date of receipt of the Order and may differ to the price in the published pricing catalogue. The prices for Goods and/or Services published pricing catalogue by us are subject to alteration without notice. It is our intention to maintain the prices shown for the duration of each pricing catalogue publication period. However, late notification of price changes is common in the pharmaceutical industry and it is sometimes necessary to alter prices within the currency of a published pricing catalogue. We may agree to discount these prices or provide rebates, incentives or other allowances to you.

5.2 Unless otherwise stated in writing, all prices quoted are exclusive of GST, which must be added to the price and be paid by you if GST is applicable. Where we have indicated a product's tax status (based on our assumption that you will sell that product without a prescription to an individual), it is an indication only and should not be relied upon. It is your responsibility to determine whether or not GST is payable.

5.3 Any suggested or recommended prices in the published pricing catalogue, on our invoice, or our other publications are indicative only and carry no obligation

for you to comply with that suggestion or recommendation.

6. DELIVERY OF GOODS

6.1 Delivery of Goods is to the location identified as the business premises listed on your Application Form ("**Delivery**"), unless otherwise specified in writing. ("Deliver" and "Delivered" have corresponding meanings.)

6.2 You acknowledge that any Delivery times provided by us to you are estimates only.

6.3 We are not liable for any loss, damage or delay suffered by you or any third party arising out of late Delivery or non-Delivery of Goods.

6.4 You acknowledge that by accepting Delivery, you represent that the Delivered Goods have been received in accordance with the requirements of:

- (a) the *Therapeutic Goods Act 1989* (Cth) and any associated regulations, if applicable; and
- (b) any state or territory law, regulation, code of practice or other subordinate legislation regarding transport, delivery and storage of the Goods.

7. PAYMENT

7.1 You must pay:

- (a) the agreed charges in respect of each item of Goods and each Service supplied by us;
- (b) all other charges agreed between you and us from time to time;
- (c) any applicable stamp or other duties; and
- (d) any other amounts owing under the Terms,

without deduction or set-off, to us within the relevant timeframe set out in this clause 7.

7.2 If we agree to supply Goods and/or Services to you on credit the following terms apply:

- (a) Unless another date is indicated on your statement or otherwise agreed by us your payments will be due by the 25th day of each month following the month in which the Services are provided and/or the Goods are Delivered to the location identified as the business premises on your Application Form.
- (b) In relation to clauses 7.2(a):

- (i) no Discounts or Incentives will apply to payments made after the due date; and
- (ii) where the due date falls on a day that is not a business day, payments are due the prior business day.

7.3 You have not paid our invoice for the supply of Goods and/or Services to you ("**Invoice**") until the entire amount due at any time by you to us under that Invoice has been received by our bank in immediately available funds.

7.4 If you object to any item or calculation on an Invoice, you must:

- (a) notify us of your objection in accordance with our relevant policies and;
- (b) pay the full amount of the Invoice less the disputed amount by the due date.

If you fail to give notice by the prescribed time and using the prescribed method, you are deemed to have accepted the contents of the Invoice as being true and correct.

7.5 If you want us to reconsider our response after you have made your objection in accordance with clause 7.4, you must escalate your objection by providing written notice (this includes email notice) to your state's credit manager within 14 days of receiving our original response.

7.6 We may take any objection made in accordance with clause 7.4 into account in a subsequent Invoice to you. Payment of subsequent Invoices from us incorporating any adjustments by us resulting from an objection constitutes a final determination of the objection as between you and us.

7.7 You agree that a certificate given by us, which is signed by a person appointed by us as an authorised officer or by our legal advisors, in the absence of any manifest error is sufficient evidence of the facts and matters stated in that certificate, including any amount you owe to us, and you agree that such a certificate may be produced by us to a Court or any other person for the purpose of any Court proceeding or any other purpose concerning a Contract.

8. ALL CONTRACTS

8.1 Where you are a company, we reserve the right to require a guarantee and indemnity (in a form and for an amount satisfactory to us) from the directors of the company. Such guarantee and indemnity is to be current for the period of time during which we accept Orders from you. In any event if you are not a company we

reserve the right to require a guarantee and indemnity from an acceptable person.

8.2 If an amount is payable by us to you under a Contract, or under any other Account, arrangement or agreement between you and us, we are entitled to set off that amount against any amount you owe us under another Contract or under any other Account, arrangement or agreement where the parties to the Contracts or Accounts are the same.

8.3 We may register any security interest in connection with these Terms for the purposes of the PPSA (including a security interest under a Contract) for whatever class or classes of collateral we think fit. You consent to any registration by us and may not make an amendment demand. You must do anything (such as obtaining consents, signing and producing receipts and documents, getting documents completed and signed and supplying information) which we ask and consider necessary for the purposes of ensuring that each such security interest is enforceable, perfected and otherwise effective.

8.4 In relation to any security interest in connection with these Terms:

- (a) we need not give any notice under the PPSA (including a notice of a verification statement) in relation to a security interest in connection with these Terms unless the notice is required by the PPSA and cannot be excluded;
- (b) we need not comply with any of the provisions of the PPSA that would otherwise apply to the extent the law permits them to be excluded; and
- (c) you may not exercise rights under sections 142 (redemption of collateral) or 143 (reinstatement of security interest) of the PPSA to the extent the law permits them to be excluded.

8.5 Everything you are required to do under clauses 8.3 and 8.4 is at your expense. You agree to pay or reimburse our costs in connection with anything you are required to do under clauses 8.3 and 8.4.

9. DEFAULT IN PAYMENT

9.1 Failure to make payment when due is a default under a Contract which, at our option, entitles us at any time to do any or all of the following:

- (a) charge you late payment fees on any monies unpaid on the due date in accordance with the rate published from time to time in the published pricing catalogue from the due date until you pay the amount in full;

- (b) demand immediate settlement of credit accounts, Forward Charge amounts, outstanding late payment fees or other amounts;
 - (c) terminate that Contract in accordance with clause 13 and require payment in full for all Goods and/or Services supplied up to the date of termination, or require the return of those Goods, or undertake any action in accordance with clause 11.5(c), at our election;
 - (d) continue with that Contract and recover all amounts outstanding under that Contract and damages suffered by or as a consequence of such non-payment;
 - (e) suspend all future deliveries until all outstanding Invoices are paid;
 - (f) temporarily suspend credit terms and credit account facilities for any period that we deem necessary or permanently cancel them;
 - (g) temporarily suspend your account for any period that we deem necessary or permanently cancel it; and
 - (h) where you have more than one Contract or Account with us for which you are liable (including any Contracts for which you are jointly and severally liable):
 - (i) to transfer overdue amounts owing on one Contract or Account to any other Contract or Account; and
 - (ii) to declare a default in relation to all Contracts or Accounts.
- 9.2 You will indemnify us for all costs (including legal costs), charges, commissions, fees and disbursements incurred by us in recovery of any unpaid account, including charges for any dishonoured cheques received.
- 9.3 If you owe us money in relation to any Contract, we reserve the right to change or withdraw any Discounts or Incentives, and/or to remove any credit facilities provided to you under any other Contract you may have with us.
- 10. INSPECTION, INSURANCE AND RECORD-KEEPING**
- 10.1 You must inspect the Goods provided by us immediately upon Delivery, and notify us immediately of any discrepancy between the Goods Delivered and the Invoice.
- 10.2 You are responsible for insuring the Goods from Delivery, and are responsible for maintaining such insurance until you have paid for the Goods in full.
- 10.3 You must comply with all state and territory laws relating to:
 - (a) record-keeping, storage and any other matters relating to the Goods, including without limitation, those applying to dangerous Goods and temperature-sensitive Goods from the time that they are Delivered;
 - (b) any limitations on your ability to deal with the Goods supplied (including limitations on your ability to export or resupply Goods); and
 - (c) any limitations on the types of goods and/or services that your business may offer.
- 10.4 You will not supply the Goods outside Australia without our prior written agreement.
- 11. RISK AND TITLE**
- 11.1 Goods supplied by us to you are at your risk immediately on Delivery.
- 11.2 Save for any Goods returned to us in accordance with our relevant policy, or any short Delivery notified to us in accordance with our relevant policy, all other Goods identified on the Invoice are deemed to have been accepted by you "as is" upon Delivery.
- 11.3 Proper title to Goods supplied by us to you under a Contract does not pass to you until all Goods supplied by us under any Contract have been paid for in full as identified in clause 7.3.
- 11.4 Where you do not make payment in respect of all Goods supplied under any Contract, we can elect to treat any payment as having been made first in respect of Goods which have passed out of your possession.
- 11.5 Until all Goods have been paid for in full:
 - (a) you must store Goods separately and in such manner as to show clearly that they are not your property and are property of the owner, whether the owner is us or another;
 - (b) you may, unless you have failed to make payment in respect of any Goods when due or an Insolvency Event occurs, sell Goods, in the ordinary course of your business, as the owner's trustee and must hold all proceeds of sale on trust for the owner and must keep the proceeds separately;

- (c) you authorise us (and our representatives) to enter any premises (at any time, whether or not monies are immediately due and payable under these Terms) upon which Goods are stored to enable the owner to inspect Goods, to reclaim possession of Goods, and to sell or otherwise dispose of the Goods in any way and on any terms (including price) that the owner chooses, and you warrant that the landlord of those premises (if applicable) has provided consent to such access. These rights are in addition to any rights we may have under Chapter 4 of the PPSA;
- (d) we have a security interest (for the purposes of the PPSA) in the Goods and any proceeds until title passes to you in accordance with clause 11.3. This security interest secures all moneys owing by you to us under these Terms and each Contract in connection with the Goods. Each security interest is a "purchase money security interest" under the PPSA to the extent that it secures payment of the amounts owing in relation to the Goods;
- (e) the security interest arising under this clause 11.5 attaches to the Goods when you obtain possession of the Goods and the parties to the Contract confirm that they have not agreed that any security interest arising under this clause 11.5 attaches at any later time.

12. CLOSURE OF ACCOUNT/ CHANGE OF BUSINESS / SALE OF BUSINESS

- 12.1 You must notify us in writing and provide us with any information or documents that we reasonably require, no less than 14 days before a proposed change of ownership, change of business structure, incorporation, change of business name or business premises or closing your account with us.
- 12.2 If providing us with information in accordance with clause 12.1 means that you will disclose third party information, you must provide third party written consent to that disclosure at the time of information provision.
- 12.3 You indemnify us against any losses incurred due to change of ownership, change of business structure, incorporation, partnership or change of name or business premises.
- 12.4 If you do not comply with clause 12.1, you will be liable for any losses incurred due to the events set out in that clause, including, without limitation, any charges made by someone other than you operating at your last-notified business premises after account closure until the time that you notify us of the closure.

- 12.5 We reserve the right to request immediate payment for all outstanding monies, including current and Forward Charged amounts, upon closure of the account, change of business premises or sale of the business.

13. TERM AND TERMINATION OF A CONTRACT

- 13.1 A Contract commences upon our acceptance of an Order, in accordance with clause 2.2(b) and expires 7 days after the date of payment for the Order.
- 13.2 We may terminate a Contract:
 - (a) at any time upon 14 days' notice, at our sole discretion;
 - (b) if you breach any provision of a Contract and fail to remedy the breach within 7 days of receiving written notice from us requiring you to do so; and
 - (c) immediately if an Insolvency Event occurs.
- 13.3 On termination, all amounts owing to us on any account (whether the due dates have passed or not) become immediately due and payable.
- 13.4 On termination of a Contract under clause 13.2 we retain rights against you in respect of any past breach, in addition to any other rights, powers or remedies provided by law.
- 13.5 All indemnities in a Contract are continuing and will not be released by our neglect or forbearance or by a Contract being terminated or otherwise ceasing to operate.
- 13.6 We will not be liable to you for any claims by you for any loss and damage for, or on account of, or arising from, any termination of a Contract under this clause 13 or for any suspension, withholding or retention by us in accordance with clause 9.1.
- 13.7 Time is of the essence to these Terms.

14. LIMITATION OF LIABILITY

- 14.1 To the maximum extent permitted by law and subject to clauses 14.2 and 14.3:
 - (a) We exclude all conditions and warranties expressed or implied whether by statute, the common law, equity trade custom, or usage or otherwise howsoever.
 - (b) We exclude all liability for loss or damage (including all indirect and consequential loss and damage) suffered by you or third parties in connection with the Goods and/or Services offered

- and/or provided by us in connection with a Contract.
- (B) the payment of the cost of having the services supplied again; and
- (c) Where liability cannot be excluded, we limit liability to the resupply (or at our election, paying for the cost of resupply) of the relevant Goods and/or Services.
- (d) We accept no liability in relation to or on behalf of third parties, including liability to your customers or liability for the manufacturers of Goods.
- (e) If despite clauses 14.1(a), (b), (c) and (d), we are held or found to be liable to you for any matter relating to or arising in connection with a Contract, whether based on an action or claim in contract, tort or otherwise, the amount of damages that you will be entitled to recover from us will be limited to the amount paid by you.
- 14.2 Pursuant to the Australian Consumer Law (the **ACL**) (being Schedule 2 to the Competition and Consumer Act 2010 (Cth)):
- (a) this clause applies in respect of the goods or services offered and/or provided by us in connection with a Contract which are not of a kind ordinarily acquired for personal, domestic or household use or consumption;
- (b) pursuant to section 64A, our liability for a failure to comply with a guarantee that applies under Division 1 of Part 3-2 in respect of goods and services to which this clause applies:
- (i) is limited in the case of goods (other than a guarantee under section 51, 52 or 53) to any one of the following as determined by us:
- (A) the replacement of the goods or the supply of equivalent goods;
- (B) the repair of the goods;
- (C) the payment of the cost of replacing the goods or acquiring equivalent goods; or
- (D) the payment of the cost of having the goods repaired; and
- (ii) is limited in the case of services, to any one of the following as determined by us:
- (A) the supplying of the services again; or
- (B) the payment of the cost of having the services supplied again; and
- (c) our liability to you under section 274 in respect of goods to which this clause applies is limited in the manner provided for in section 276A; and
- (d) this clause does not apply if (in the case of clause 14.2(b)) you establish that reliance on it would not be fair and reasonable under section 64A(3) or if (in the case of clause 14.2(c)) you establish under section 276A(2) that it is not fair and reasonable for our liability to be limited.
- 14.3 Nothing in this clause 14 excludes, restricts or modifies the application of any law, the exercise of any right or any liability which cannot, by law, be excluded, restricted or modified or any right to rely on any exclusion or limitation of liability or any defence provided for by any such law.
- 15. DIRECT SUPPLY ARRANGEMENTS**
- From time to time, we may allow a supplier who directly provides you with Goods and/or Services to bill you on our Invoice. You accept responsibility for the amounts debited by us relating to Goods and/or Services supplied by others. You must raise any dispute related to Goods and/or Services provided directly with the direct supplier. Your dispute with a direct supplier will not entitle you to withhold payment to us.
- 16. MISCELLANEOUS**
- 16.1 You may not assign or otherwise deal with a Contract except with our prior written consent.
- 16.2 We may assign, otherwise deal or sub-contract the performance of the whole or any part of our obligations under a Contract.
- 16.3 Our failure to insist upon strict performance of the Terms or any part thereof will not be deemed to be a waiver of any of our rights or remedies under a Contract nor any rights arising out of your subsequent breach or default.
- 16.4 If any of the Terms are unenforceable, illegal or void then it is severed and the rest of the Terms remain in force.
- 16.5 Our obligations (other than the obligation to pay money) are suspended during the time and to the extent that we are prevented from complying with them by events beyond our control.
- 16.6 You indemnify us against any and all costs, loss or expenses (including legal costs on a solicitor/client basis) that we incur in the exercise or enforcement of our

rights under these Terms, or suffered either by us or by a third party following your breach of these Terms.

- 16.7 These Terms, our Policies, any Contract and any communications we have with you regarding our terms and conditions of supply (including without limitation our pricing and Discounts or Incentives) are our confidential information. You or your employees must not disclose this confidential information to any person (except to legal, financial or business advisers for the purpose of seeking advice relating to the terms and conditions), without our prior written consent. You must notify us immediately of any unauthorised use or disclosure of our confidential information. Nothing in this clause prevents you from disclosing our confidential information if you reasonably believe it is required by law or stock exchange (except this paragraph does not permit you to disclose or authorise the disclosure of any information under sections 275(1) and (4) of the PPSA unless section 275(7) of the PPSA applies), as long as you notify us immediately when you become aware that such a disclosure may be required. This obligation of confidentiality will survive expiration or termination of these Terms and will continue until the information ceases to be confidential.
- 16.8 Each Contract will be governed by and construed in accordance with the laws of Victoria. The parties submit to the non-exclusive jurisdiction of the Victorian Courts and any Courts with appellate jurisdiction from the Victorian Courts.
- 16.9 Our privacy policy describes how we manage the collection, disclosure and use of personal information. Our privacy policy, as amended from time to time, forms part of these Terms and is available on request.

