

1. Definitions and Interpretation

1.1 In these terms and any related Contract, unless the contrary intention appears:

Haemokinesis means Haemokinesis Pty Ltd. (ABN 24 153 431 693).

Business Day means a day that is not a Saturday, Sunday or public holiday in Victoria or, for deliveries of Products, at the place of delivery.

Contract means a contract for sale as referred to in clause 2.5.

Customer means the person who orders Products from Haemokinesis, whether by telephone, facsimile, email, in person, through Haemokinesis's online ordering system or otherwise.

Force Majeure means any circumstance beyond the reasonable control of a party which results in a party being unable to observe or perform on time an obligation under these Terms.

GST has the same meaning as in the A New Tax System (Goods & Services Tax) Act 1999 (Cth) (as amended).

Insolvency Event means circumstances in which Customer is unable to pay its debts as they fall due or otherwise takes any corporate action or any steps are taken or legal proceedings are started for: (a) its winding-up, dissolution, liquidation, or re-organisation, other than to reconstruct or amalgamate while solvent on terms approved by Haemokinesis; (b) the appointment of a controller, receiver, administrator, official manager, trustee or similar officer of it or of any of its revenues and assets; or (c) seeks protection or is granted protection from its creditors, under any applicable legislation.

Order means a purchase order for Products which has been accepted by Haemokinesis but excluding any terms or conditions printed on or referred to in Customer's purchase orders or other documentation unless expressly agreed to in writing by Haemokinesis.

Products mean the goods purchased or to be purchased by Customer from Haemokinesis which are the subject of a Contract.

Terms means these terms and conditions of sale.

2. Orders

2.1 All orders for Products must be placed in the manner and form required by Haemokinesis.

2.2 Haemokinesis may, at its absolute discretion, determine from time to time a "Specified Order Quantity", being the minimum order value or quantity for each order of Products to be supplied to Customer.

2.3 All orders will be subject to acceptance by Haemokinesis, which may decline an order or accept an order in whole or part in its absolute discretion. Customer acknowledges that acceptance of an order by Haemokinesis will not imply that Haemokinesis will accept any future order(s) placed by Customer.

2.4 Once accepted by Haemokinesis, an Order may not be cancelled by Customer except with the express consent of Haemokinesis.

2.5 Upon the acceptance of each Order by Haemokinesis, a separate contract of sale will arise. Each Contract will comprise the accepted Order and these Terms. If there is any inconsistency

between these Terms and another provision in a Contract then the provision in the Contract will prevail only to the extent of the inconsistency.

2.6 For the avoidance of doubt no terms or conditions of Customer, including any terms or conditions printed on or referred to in Customer's offer to purchase or order will be binding on Haemokinesis or have any legal effect unless expressly agreed to in writing by Haemokinesis.

3. Price and Payment

- 3.1 The price for the Products is specified in the Contract. Unless the Contract states otherwise, Haemokinesis may alter the Price at any time prior to acceptance of an order without prior notice.
- 3.2 Customer must pay GST or any other tax duty, levy, tariff or charge applicable to the supply of the Products in addition to, and at the same time as, payment of the price. Haemokinesis will provide Customer with a tax invoice as required by law.
- 3.3 Unless the Contract states otherwise, Customer must pay the Price for Products supplied to it within 30 days of the date of the invoice for such Products.
- 3.4 Customer must not withhold payment or make any deduction from the invoiced price or any other amount owing to Haemokinesis without Haemokinesis's prior written consent.
- 3.5 Receipt of any amount will not constitute payment until such time as the amount is paid or honoured in full.
- 3.6 Haemokinesis may, at its discretion, allocate a payment that does not specifically identify the invoice for which such payment is made in satisfaction for monies owing under any outstanding invoices without regard to the date of those invoices.
- 3.7 Haemokinesis may charge interest on any overdue monies at the rate which is 2% above the rate charged by Haemokinesis' major banker for commercial overdraft balances of over \$100,000 from time to time, calculated from the due date for payment of the outstanding amount until the date of payment by Customer. Any payment made by Customer will be credited first against any interest that has accrued.
- 3.8 Haemokinesis will be entitled to recover from Customer all legal and other costs incurred by Haemokinesis arising from Customer's default in payment and the collection of any overdue monies.

4. Delivery Terms

- 4.1 Any schedules quoted by Haemokinesis for delivery of the Products are estimates only. Haemokinesis will use its reasonable endeavours to supply the Products in the quantities specified in the relevant Contract.
- 4.2 Haemokinesis will not be liable for any loss suffered by Customer arising out of any delay or failure to deliver the Products (or any part of them) or failure to deliver in the requested quantities.
- 4.3 Haemokinesis is entitled to refuse to deliver the Products to Customer if there are any outstanding monies owing to Haemokinesis.
- 4.4 Delivery of the Products will be made in the manner and at the place specified in the relevant Contract or if not specified, delivery will be made as determined by Haemokinesis.
- 4.5 Customer agrees to accept delivery of the Products at any time between 9.00am to 5.00pm on a Business Day.
- 4.6 If Haemokinesis fails to deliver some or all of the Products pursuant to a Contract, Customer will not be entitled to cancel that Contract or any other order, Contract or delivery. Haemokinesis will not be obliged to accept any claims for shortages of deliveries or non-conforming Products unless written notice of the claim is given to Haemokinesis within 10 Business Days after receipt by Customer of the Products at the delivery destination.
- 4.7 If Haemokinesis supplies the Products pre-packed and labelled, Customer must not sell, supply or otherwise deal with the Products unless the packaging and labelling remains intact, and Customer must not alter, remove, conceal or tamper with any batch numbers or other means of identification used in relation to the Products.
- 4.8 If Customer does not, or indicates to Haemokinesis that it will not, take or accept delivery, then the Products will be deemed to have been delivered when Haemokinesis was willing to deliver them.
- 4.9 Haemokinesis reserves the right to deliver the Products by instalments. Each instalment may be invoiced separately and will be deemed to be a separate contract under the same provisions as

the main Contract.

4.10 Haemokinesis may suspend or cancel delivery of the Products if Haemokinesis reasonably believes that the Products may cause injury or damage (including for technical, scientific, medical or efficacy reasons) or may infringe the intellectual property rights of any person, or if payments owing from Customer to Haemokinesis remain outstanding. No such suspension or cancellation will in any way constitute admission of liability or fault on Haemokinesis's part.

5. Containers and Pallets

5.1 Any pallets or containers used for the delivery, storage or display of the Products are not included in the Price unless otherwise specified and will remain the property of their owner.

5.2 Customer must promptly return or exchange the pallets and containers in its custody on the day of delivery (unless otherwise agreed with Haemokinesis) or reimburse Haemokinesis the cost of replacement or repair of lost or damaged pallets or containers.

5.3 Haemokinesis may charge a deposit to Customer for a pallet or container which will be credited in full if the pallet or container is returned to Haemokinesis within 3 months of dispatch and is in good order and condition.

6. Risk and Title

6.1 Legal and beneficial ownership in the Products will not pass to Customer until Customer has paid in full the Price for those Products.

6.2 Risk of loss of or damage to the Products will remain with Haemokinesis only until the first of the passing of title to the Products to Customer, or delivery of the Products by Haemokinesis to Customer in accordance with clause 4. Thereafter risk of damage to, or loss or deterioration of, the Products from any cause whatsoever passes to Customer.

6.3 Until all outstanding monies have been paid to Haemokinesis for Products delivered to Customer:

(a) Customer must separately store those Products in such a way that makes it clear that they are the property of Haemokinesis;

(b) in the event of a default (specified in clause 13), Haemokinesis or its representative will be entitled, without the necessity of giving any notice, to enter premises occupied by Customer to search for and remove any of those Products without in any way being liable to Customer, and may dispose of or retain such Products as Haemokinesis sees fit without being required to give notice or account to Customer. If the Products or any of them are wholly or partially attached to or incorporated in any other product, Haemokinesis may (when practical) disconnect them in any way necessary to remove the Products; and

(c) all costs and expenses incurred by Haemokinesis as a result of taking action in accordance with clause 6.3(b), together with transportation and storage charges, must be paid by Customer to Haemokinesis on demand.

6.4 Until title to the Products passes to Customer, Customer acknowledges and agrees:

(a) that the Products supplied and not resold are held by it as a bailee for Haemokinesis;

(b) Customer may resell the Products without the right of Customer to bind Haemokinesis to any liability to any third party (whether contractual or otherwise);

(c) any resale of the Products must only be made on the condition the purchaser is expressly made aware of the existence of Haemokinesis's rights under this clause 6;

(d) if the Products have been resold by Customer, Customer will hold so much of the proceeds of sale as does not exceed the outstanding monies on trust for Haemokinesis immediately when they are receivable or received;

(e) when the proceeds held in trust for Haemokinesis under clause 6.4(d) are received they must either be paid immediately to Haemokinesis or held in a separate bank account as trustee for Haemokinesis and they must not be used by Customer in any other way whatsoever; and

(f) the authority conferred on Customer by clause 6.4(b) may be revoked by written notice from Haemokinesis at any time if Haemokinesis deems the credit of Customer to be unsatisfactory or if Customer is in default in the performance of its obligations under any Contract, these Terms or any other agreement between Haemokinesis and Customer.

This clause 6 creates a purchase money security interest in the Products, any goods in which the Products are used as a component, and all proceeds from their respective resale by Customer. 6.5 Customer must sign all documents and take all steps as Haemokinesis may reasonably require in connection with the registration, perfection and enforcement of this purchase money security interest. Customer waives its right to be provided with verification statements pursuant to section 157 of the Personal Properties Securities Act 2009 (Cth).

7. Warranties

- 7.1 Haemokinesis warrants that all Products manufactured by it and supplied to Customer will, subject to this clause 7, comply with Haemokinesis's specifications for those Products (or if no such specifications exist, will be free of defects in materials and manufacture), for a period of 12 months from the date of delivery of the Products by Haemokinesis to Customer (the Warranty Period).
- 7.2 If a Product does not comply with the warranty set out in clause 7.1 and Customer notifies Haemokinesis in writing of the defect during the Warranty Period within 10 Business Days of the defect coming to its notice, Haemokinesis will, at its option, either exchange the Product for a new Product, or refund the Price paid for the Product.
- 7.3 When a refund is given pursuant to clause 7.2, the Product for which the refund is provided must, at Haemokinesis's option, be destroyed or returned to Haemokinesis by Customer, at Customer's expense, and if returned becomes the property of Haemokinesis.
- 7.4 The warranty in clause 7.1 does not apply:
- (a) as a result of any acts or omissions by any person other than Haemokinesis or any external cause;
 - (b) if the defect is due to the Product being used for purposes other than for purposes for which it was intended or which do not fall within the scope of any regulatory approval;
 - (c) to a Product that has been modified without the written permission of Haemokinesis; or
 - (d) if the Product has not been stored or transported in accordance with Haemokinesis's recommendations.
- 7.5 The benefit of the warranty in clause 7.1 is personal to Customer and is not assignable without the prior written consent of Haemokinesis.
- 7.6 Except as expressly set out in these Terms, the rights set out in this clause 7 are the sole and exclusive remedies of Customer with respect to defective Products.
- 7.7 Except as expressly set out in these Terms, and subject to any terms, warranties or conditions that by law may not be excluded (including those under sections 51, 52 and 53 of the Australian Consumer Law), all conditions, warranties, terms, and obligations expressed or implied by law or otherwise relating to the performance of Haemokinesis's obligations under these Terms, or any goods or services supplied, or to be supplied, by Haemokinesis under these Terms, are excluded.

8. Credits

- 8.1 Credits sought for returned Products are at Haemokinesis's discretion. Where accepted, Haemokinesis may charge a reasonable administration fee in respect of all returned Products. For the avoidance of doubt, no Products for which the shelf life has expired will be accepted for return.
- 8.2 Products, in respect of which a credit is sought and approved by Haemokinesis, must be returned to Haemokinesis's premises freight free in good and saleable condition in the original containers and packaging in which they were supplied, and accompanied by the number and date of Haemokinesis's supplying invoice.

9. Assistance and Materials Supplied by Haemokinesis

- 9.1 Subject to obligations imposed on Haemokinesis by the law which cannot be excluded or modified by these Terms, and subject to any contrary provisions in a Contract, any advice, recommendation, information, assistance or service provided by Haemokinesis in relation to Products and their use or application is given in good faith but is provided without liability or responsibility on the part of Haemokinesis and without intention that Customer should rely thereon.
- 9.2 Any material supplied by Haemokinesis for advertising and display is issued to Customer for use in its own business and is not intended for circulation or distribution to the public. Such material will remain the property of Haemokinesis, must be returned by Customer to Haemokinesis upon request and must not be modified without Haemokinesis's prior consent.

10. Adverse Experience Reporting and Recalls

- 10.1 If Haemokinesis or Customer becomes aware of any defect, fault or other condition, actual, potential or threatened, in any Products in which Customer has taken possession such that they should not be offered for sale to the public ("adverse experience") having regard to the nature and the extent of the threat, then that party must immediately give notice to the other party of the Products affected by reference to invoice numbers, product descriptions, batch codes, best before/used by date codes, APN's, item code numbers, quantities supplied, date of possession and any other unique identifier.
- 10.2 Customer agrees to co-operate to the fullest extent possible to diminish any risk to the public from the adverse experience, which includes the following:
- (a) removing the Products that may be affected by the adverse experience from offer for sale to the public;
 - (b) complying with all laws, regulations and notice requirements in relation to product recalls;
 - (c) complying with any directions and corrective action required by Haemokinesis in relation to the adverse experience;
 - (d) recalling the Products that may be affected by the adverse experience where they have been sold; and
 - (e) disseminating information that has been approved by Haemokinesis and which in Haemokinesis's opinion is necessary or desirable to limit any harm, loss or damage that maybe caused in any way in relation to the adverse experience.

11. Limitation of Liability

- 11.1 Any provision of these Terms that excludes any terms, conditions or warranties, or limits the liability of a party will apply only to the extent permitted by law and these Terms will be construed subject to such terms, conditions, warranties and limitations.
- 11.2 Subject to clause 11.1, where any terms, conditions or warranties are implied by law into these Terms which the law expressly provides may not be excluded, restricted or modified, or may be excluded, restricted or modified only to a limited extent, the liability of Haemokinesis to Customer under such implied terms, conditions or warranties is limited, at the option of Haemokinesis, to the repair or replacement of goods, or payment of the cost of repairing or replacing the goods.
- 11.3 Except as expressly provided in these Terms, to the extent permitted by law, Haemokinesis will have no liability to Customer, however arising and under any cause of action or theory of liability, in respect of special, indirect or consequential damages, loss of profit (whether direct or indirect) or loss of business opportunity

12. Indemnities

- 12.1 If Customer gives instructions to Haemokinesis with respect to the manufacture, packaging, sale or supply of the Products, Customer warrants to Haemokinesis that adherence by Haemokinesis to any such instructions will not infringe the intellectual property rights of any other person.
- 12.2 Customer releases and indemnifies Haemokinesis, its related bodies corporate, and their respective officers, employees, consultants and agents from and against all actions, claims, proceedings and demands (including those brought by third parties) which may be brought against it or them, whether on their own or jointly with those indemnified, and whether at common law, in equity or pursuant to statute or otherwise, in respect of any loss, death, injury, illness or damage (whether personal or property, and whether direct or consequential, including consequential financial loss) arising out of a breach of Customer's warranties or obligations contained in these Terms, and from and against all damages, reasonable costs and expenses incurred in satisfying, defending or settling any such claim, proceeding or demand.

13. Default

- 13.1 If an Insolvency Event occurs in relation to Customer any other event occurs which gives Haemokinesis reasonable grounds for doubting the credit of Customer, Haemokinesis may by notice to Customer, at its option and without prejudice to any other right it may have, suspend or terminate a Contract or require payment before or on delivery of the Products (notwithstanding the terms of payment applicable to the Products), or cancel any undelivered or uncompleted Products under a Contract, and may retain any monies paid by Customer in relation to the Contract and apply such monies against any loss or damage incurred by it in relation to the default by Customer.

14. Force Majeure

14.1 Neither party will be liable for any delay or failure to perform its obligations under these Terms (other than payment obligations) if such delay is due to Force Majeure.

14.2 If a delay of a party to perform its obligations is caused or anticipated due to Force Majeure, the performance of that party's obligations will be suspended.

15. General

15.1 In these Terms and any Contract, unless the contrary intention appears:

- (a) a person includes a corporation, unincorporated association, partnership, joint venture or public, statutory or governmental association or agency;
- (b) a statute or regulation includes an amendment, replacement or re-enactment of that statute or regulation;
- (c) a reference to dollars is to Australian Dollars;
- (d) the word "including" and similar expressions are not words of limitation;
- (e) a reference to conduct includes any omission and any statement or undertaking, whether or not in writing; and
- (f) where an act is to be performed on a day that is not a Business Day, the act will be required to be performed on the following Business Day.

15.2 Any notice in connection with these Terms or any Contract will be deemed to have been duly given when made in writing and delivered or sent by facsimile or post to the party to whom such notice is intended to be given, at the address or facsimile number of that party in the Contract or to such other address or facsimile number as may from time to time be notified in writing to the other party.

15.3 If any provision of these Terms is invalid, illegal or unenforceable, these Terms take effect (where possible) as if they did not include that provision.

15.4 Any failure by Haemokinesis to insist upon strict performance by Customer of any provision in these Terms will not be taken to be a waiver of any existing or future rights of Haemokinesis in relation to the provision.

15.5 Customer must not assign or otherwise deal with its rights or obligations under these Terms or a Contract without the prior written consent of Haemokinesis.

15.6 These Terms and Contracts are governed by the laws of Victoria, Australia. The parties agree to submit to the non-exclusive jurisdiction of the courts of Victoria, Australia.

15.7 These Terms (together with the Contracts) contain the entire agreement of the parties with respect to its subject matter and may only be amended in writing.

15.8 These Terms do not create a relationship of agency, partnership, joint venture or employment between the parties. Neither party has any authority to act for or incur any liability or obligation on behalf of the other party in any manner.

15.9 The parties agree that subject to the provisions of these Terms, the United Nations Convention on Contracts for the International Sale of Goods adopted at Vienna, Austria on 10 April 1980 do not apply to the supply of Products under these Terms.

15.10 These Terms and the provisions of all Contracts, are confidential and must not be disclosed by Customer to any third party without Haemokinesis's prior written consent unless such disclosure is required by law. This restriction does not apply to any of these Terms or provisions of Contracts that Haemokinesis has itself placed in the public domain.