

Terms and Conditions of Sale: Australia

1. Agreement

1.1 Any Contract between Haemokinesis and a Customer will be on these Terms to the exclusion of all other terms and conditions (including, without limitation, any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document or communication).

1.2 No terms or conditions of (or provided by) the Customer, including any terms or conditions printed on or referred to in the Customer's offer to purchase, order or other communications will be binding on Haemokinesis or have any legal effect unless expressly agreed to in writing by Haemokinesis.

1.3 Haemokinesis may revise these Terms at any time by giving notice to the Customer and the revised Terms will be immediately effective for all Orders made after notice has been given to the Customer.

2. Orders

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

2.2 Each order for Products made by the Customer to Haemokinesis is deemed to be an offer by the Customer to purchase Products subject to these Terms until it is accepted by Haemokinesis (**Order**).

2.3 By making an Order, the Customer acknowledges that it has read, understood, and agreed to be bound by these Terms.

2.4 All Orders will be subject to acceptance by Haemokinesis who may decline or accept an Order in whole or part in its absolute discretion. The Customer acknowledges that acceptance of an Order by Haemokinesis will not imply that Haemokinesis will accept any future Order(s) placed by the Customer.

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

2.6 Upon the acceptance of an Order by Haemokinesis, a separate contract of sale will arise between the Customer and Haemokinesis (**Contract**). Each Contract will comprise the accepted Order and these Terms. If there is any inconsistency between these Terms and an Order accepted by Haemokinesis, then the provision in the Order will prevail only to the extent of the inconsistency.

2.7 Haemokinesis may, in 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 the Customer.

3. Price and Payment

3.1 The price for the Products is specified in the Contract (**Price**). Unless the Contract states otherwise, Haemokinesis may alter the Price at any time prior to acceptance of an Order without prior notice.

3.2 Haemokinesis will usually (but is not required to) invoice the Customer for Products on or soon after dispatch.

3.3 Unless the Contract states otherwise, the Customer must pay the Price for Products supplied to it within 30 days of the date of the invoice for such Products.

3.4 The Customer must not withhold payment or make any deduction from the invoiced Price or any other amount owing to Haemokinesis without Haemokinesis' 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 4% above the Reserve Bank of Australia's Interbank Overnight Cash Rate, calculated from the due date for payment of the outstanding amount until the date of payment by the Customer. Any payment made by the Customer will be credited first against any interest that has accrued.

3.8 Haemokinesis will be entitled to recover from the Customer all legal and other costs reasonably incurred by Haemokinesis arising from the Customer's default in payment and the collection of any overdue monies.

3.9 All payments payable to Haemokinesis under the Contract will become due immediately upon termination of the Contract despite any other provision.

4. GST

4.1 All prices quoted or listed are exclusive of GST unless expressly indicated to the contrary.

4.2 Where a payment or consideration for the Products is not expressed to include GST, the Customer must pay, in addition to the payment or consideration expressed and without deduction or set off, an amount in respect of GST applicable to the supply by Haemokinesis to the Customer.

4.3 Payment of GST must be made at the same time as payment is due on the invoice for the Products.

4.4 Haemokinesis will issue the Customer with a correctly rendered tax invoice for any amount collected on account of GST.

4.5 The Customer must pay 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 the Customer with a tax invoice as required by law.

5. Delivery Terms

- 5.1 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 and in accordance with the quoted delivery schedule.
- 5.2 To the extent permitted by law, Haemokinesis will not be liable for any loss suffered by the 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 or by the requested time.
- 5.3 Haemokinesis is entitled to refuse to deliver the Products to the Customer if there are any outstanding monies owing to Haemokinesis.
- 5.4 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.
- 5.5 The Customer agrees to accept delivery of the Products at any time between 9.00am to 5.00pm on a Business Day.
- 5.6 The Customer must notify Haemokinesis within 7 days of delivery of any shortfall in or loss or damage to the Products or it will be deemed to have accepted the Products (in which case the Products cannot be returned).
- 5.7 If Haemokinesis fails to deliver some or all of the Products pursuant to a Contract, the 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 the Customer of the Products at the delivery destination.
- 5.8 If Haemokinesis supplies the Products pre-packed and labelled, the Customer must not sell, supply or otherwise deal with the Products unless the packaging and labelling remains intact, and the Customer must not alter, remove, conceal or tamper with any batch numbers or other means of identification used in relation to the Products.
- 5.9 If the 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.
- 5.10 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.
- 5.11 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 the Customer to Haemokinesis remain outstanding. No such suspension or cancellation will in any way constitute admission of liability or fault on Haemokinesis' part.

6. Containers and Pallets

- 6.1 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.
- 6.2 The 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.
- 6.3 Haemokinesis may charge a deposit to the 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.

7. Risk and Title

- 7.1 Legal and beneficial ownership in the Products will not pass to the Customer until the Customer has paid in full the Price for those Products along with any additional charges set out in this Contract or the relevant invoice (including any applicable interest).
- 7.2 Risk of loss of or damage to the Products will remain with Haemokinesis only until the earlier to occur of the passing of title to the Products to the Customer or delivery of the Products by Haemokinesis to the Customer in accordance with clause 5. Thereafter risk of damage to, or loss or deterioration of, the Products from any cause whatsoever passes to the Customer.
- 7.3 Until all outstanding monies have been paid to Haemokinesis for Products delivered to the Customer:
- (a) the 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 18), the Customer grants Haemokinesis (and any of its employees or representatives) an irrevocable licence and authority to enter premises occupied by the Customer (without notice) to search for and remove any of those Products without in any way being liable to the Customer provided that Haemokinesis may only recover and resell for its own account sufficient amounts of Product to satisfy all of the Customer's unpaid liabilities in respect of the Products plus the costs relating to resale;
 - (c) if any Products removed (or proposed to be removed) by Haemokinesis in accordance with clause 7.3(b) 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		Haemokinesis asks and considers necessary for the purposes of:
	(d) all costs and expenses incurred by Haemokinesis as a result of taking action in accordance with clause 7.3(b), together with transportation and storage charges, must be paid by the Customer to Haemokinesis on demand.		(a) ensuring that the security interest is enforceable, perfected and otherwise effective; or
7.4	Until title to the Products passes to the Customer, the Customer acknowledges and agrees:		(b) enabling Haemokinesis to apply for any registration, or give any notification, in connection with the security interest so that the security interest has the priority required by Haemokinesis; or
	(a) that the Products supplied and not resold are held by it as a bailee for Haemokinesis;	7.6	The Customer waives its right to be provided with verification statements pursuant to section 157 of the PPSA.
	(b) the Customer may resell the Products without the right of the Customer to bind Haemokinesis to any liability to any third party (whether contractual or otherwise);	7.7	Neither party need give any notice under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.
	(c) any resale of the Products must only be made on the condition the purchaser is expressly made aware of the existence of Haemokinesis' rights under this clause 7;	8.	Warranties
	(d) if the Products have been resold by the Customer, the 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;	8.1	Other than as specifically set out in these Terms, all warranties implied by statute or law are excluded to the full extent permitted by law.
	(e) when the proceeds held in trust for Haemokinesis under clause 7.4(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 the Customer in any other way whatsoever; and	8.2	Haemokinesis warrants that all Products manufactured by it and supplied to the Customer will, subject to this clause 8, comply with Haemokinesis' 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 the Customer (Warranty Period). The Customer's rights under this clause 8.2 are in addition to any statutory rights it may have as a consumer.
	(f) the authority conferred on the Customer by clause 7.4(d) may be revoked by written notice from Haemokinesis at any time if Haemokinesis deems the credit of the Customer to be unsatisfactory or if the Customer is in default in the performance of its obligations under any Contract, these Terms or any other agreement between Haemokinesis and the Customer. This clause 7 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 the Customer.	8.3	If a Product does not comply with the warranty set out in clause 8.2 and the Customer notifies Haemokinesis in writing of the defect or failure during the Warranty Period, then 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.
		8.4	When a refund is given pursuant to clause 8.3, the Product for which the refund is provided must, at Haemokinesis' option, be destroyed or returned to Haemokinesis by the Customer, at the Customer's expense, and if returned becomes the property of Haemokinesis.
		8.5	The warranty in clause 8.2 does not apply:
7.5	If Haemokinesis determines that the Contract is or contains a security interest for the purposes of the <i>Personal Properties Securities Act 2009</i> (Cth) (PPSA), the Customer agrees to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which		(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	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 or any other unique identifier.
(d) if the Product has not been stored or transported in accordance with Haemokinesis' recommendations.	
8.6 The benefit of the warranty in clause 8.2 is personal to the Customer and is not assignable without the prior written consent of Haemokinesis.	11.2 The 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:
8.7 Except as expressly set out in these Terms, the rights set out in this clause 8 are the sole and exclusive remedies of the Customer with respect to defective Products.	(a) removing the Products that may be affected by the adverse experience from offer for sale to the public;
9. Credits	(b) complying with all laws, regulations and notice requirements in relation to product recalls;
9.1 Credits (refunds) sought for returned Products are at Haemokinesis' sole discretion. For the avoidance of doubt, no Products for which the shelf life has expired will be accepted for return.	(c) complying with any directions and corrective action required by Haemokinesis in relation to the adverse experience;
9.2 Products, in respect of which a credit is sought and approved by Haemokinesis, in writing, must be returned, at the Customer's expense, to Haemokinesis' 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' supplying invoice.	(d) recalling the Products that may be affected by the adverse experience where they have been sold; and
9.3 Haemokinesis reserves the right to charge a restocking fee on returned Products at a rate of 15% of the invoiced cost.	(e) disseminating information that has been approved by Haemokinesis and which in Haemokinesis' opinion is necessary or desirable to limit any harm, loss or damage that maybe caused in any way in relation to the adverse experience.
10. Assistance and Materials Supplied by Haemokinesis	12. Storage & handling
10.1 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 the Customer should rely thereon.	12.1 It is the Customer's responsibility:
10.2 Any material supplied by Haemokinesis for advertising and display is issued to the 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 the Customer to Haemokinesis upon request and must not be modified without Haemokinesis' prior written consent.	(a) to ensure that all applicable health and safety regulations and therapeutic goods requirements are observed and other appropriate steps taken in relation to the storage, handling, sale and the use of the Products once they are delivered to the Customer; and (b) where information is supplied to the Customer on potential hazards relating to the Products, to bring such information to the attention of its personnel, sub-contractors, visitors and customers.
11. Adverse Experience Reporting and Recalls	12.2 It is also the Customer's responsibility to provide safe facilities for the reception of Products into storage.
11.1 If Haemokinesis or the Customer becomes aware of any defect, fault or other condition, actual, potential or threatened, in any Products in which the 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	13. Limitation of Liability (Consumer Guarantees)
	13.1 In this clause:
	(a) "Australian Consumer Law" has the meaning given to that term in section 4 of the <i>Competition and Consumer Act 2010</i> (Cth);

- (b) "Consumer" has the meaning given to that term in section 2 of the Australian Consumer Law; and
- (c) "Consumer Guarantee" means, in relation to the Products, any guarantee which the Australian Consumer Law requires Haemokinesis to provide, or deems Haemokinesis to have provided, to the Customer.

13.2 If, in relation to the Contract, the Customer is a Consumer then:

- (a) the provisions of the Contract, other than clause 13.2(b), are negated and of no effect to the extent that any of them limit or exclude, or might but for this clause, be construed to purport to limit or exclude, the liability of Haemokinesis under the Australian Consumer Law for any failure to comply with a Consumer Guarantee;
- (b) Haemokinesis' liability under the Australian Consumer Law for any failure to comply with a Consumer Guarantee is limited to supplying the Products again or payment of the costs of having the Products supplied again; and
- (c) unless the Australian Consumer Law requires otherwise, the remedy provided to the Customer under clause 13.2(b), in any particular instance, will be at Haemokinesis' reasonable discretion.

14. Limitation of Liability (other than Consumer Guarantees)

14.1 To the extent permitted by law and subject to clause 13, the liability of Haemokinesis for a breach of a warranty or condition under the Contract or implied by statute or law about the Products sold, is at the option of Haemokinesis, limited to:

- (a) the replacement of the Products;
- (b) the supply of equivalent Products;
- (c) repair of the Products;
- (d) payment of the cost of replacing the Products;
- (e) payment of the cost of acquiring equivalent Products; or
- (f) payment of the cost of having the Products repaired.

14.2 Under no circumstances will Haemokinesis be liable for any consequential or indirect loss, direct or indirect loss of profits, loss of business or any special or exemplary damages suffered or incurred in connection with the Contract or the Products or any party's actions or omissions under the Contract.

15. Indemnities

15.1 If the Customer gives instructions to Haemokinesis with respect to the manufacture, packaging, sale or supply of the Products, the Customer warrants to Haemokinesis that adherence by Haemokinesis to any such instructions will not infringe the intellectual property rights (or any other rights) of any other person.

15.2 The 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) rising out of breach of the 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.

16. Intellectual Property

16.1 The Customer is not permitted to use any of Haemokinesis' intellectual property for any purpose without Haemokinesis' prior written consent.

16.2 No right, title, interest or license in any of Haemokinesis' intellectual property is granted to the Customer under the Contract.

17. Confidentiality

17.1 The Customer must keep in confidence and must not, without securing Haemokinesis' prior written consent, originate any publicity (including any news release or public announcement) or disclose to any third party any Confidential Information, except:

- (a) to its employees or representatives requiring the information for the purposes of the Contract, provided they are made aware of these restrictions; or
- (b) if the Customer is required to do so by law or by a stock exchange (except this does not permit the Customer to disclose any information of the kind referred to in section 275(1) of the PPSA unless section 275(7) of the PPSA applies).

17.2 The provisions of any Contract are confidential and must not be disclosed by the Customer to any third party without Haemokinesis' 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.

18. Default

18.1 If an Insolvency Event occurs in relation to the Customer or the Customer breaches (or otherwise fails to perform any of its obligations under) the Contract, Haemokinesis may by notice to the Customer, at its option and without prejudice to any other right it may have:

- (a) suspend or terminate the Contract;
- (b) require payment before or on delivery of the Products (notwithstanding the terms of payment applicable to the Products); or
- (c) cancel any undelivered or uncompleted Products under the Contract.

18.2 If Haemokinesis takes any action under clause 18.1, Haemokinesis may retain any monies paid by the Customer in relation to the relevant Contract and apply such monies against any loss or damage incurred by it in relation to the default by the Customer.

19. Force Majeure

19.1 Haemokinesis will not 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.

19.2 If a delay of Haemokinesis to perform its obligations is caused or anticipated due to Force Majeure, the performance of Haemokinesis' obligations will be suspended.

20. General

20.1 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.

20.2 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.

20.3 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.

20.4 Any failure by Haemokinesis to insist upon strict performance by the 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.

20.5 The 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.

20.6 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.

20.7 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.

20.8 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.

20.9 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.

21. Definitions and Interpretation

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

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 2.6.

Confidential Information means all confidential, non-public or proprietary information, regardless of how the information is stored or delivered, exchanged between the parties relating to Haemokinesis' business, technology or other affairs and includes the Contract and any pricing arrangements or discounts discussed or agreed by the parties.

Customer means the person who orders Products from Haemokinesis, whether by telephone, facsimile, email, in person, through Haemokinesis' 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).

Haemokinesis means Haemokinesis Pty Ltd (ABN 24 153 431 693) or any of its subsidiaries which are stated in a Contract.

Insolvency Event means circumstances in which the 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 has the meaning given to that term in clause 2.2.

PPSA has the meaning given to that term in clause 7.5.

Price has the meaning given to that term in clause 3.1.

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

Terms means these standard terms and conditions of sale.