

Definitions

Company means Olympus Australia Pty Ltd (ABN 90 078 493 295) and its successors and assigns.

Confidential information means any information disclosed by the Company (discloser) to the Customer (recipient) pursuant to these Terms, which: if in tangible form (including, for example, Company price lists, documents, email communication, prototypes, or samples) is clearly designated or marked as "Confidential", "Proprietary" or in some other manner to indicate its confidential nature at the time of disclosure; or if disclosed orally or by visual inspection anything in relation to the products to be launched, its business plan and ideas. Information of a third party that is in the discloser's possession and is disclosed to the recipient under these Terms.

Corporations Act means the *Corporations Act 2001 (Cth)*.

Customer means the entity or person acquiring the Goods upon these terms.

Default Rate means the rate equal to 1.15% above the rate fixed under Section 2 of the *Penalty Interest Rates Act 1983 (Vic)* applicable as at the date of non-payment.

Delivery means delivery of the Goods by the Company to the Customer in accordance with clause 6.

Goods means any goods, software or spare parts for the goods that the Company offers for sale

GST has the meaning given to that term in the GST Law.

GST Law has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Insolvency Event means, for a person, being in liquidation or provisional liquidation or under administration, having a controller (as defined in the Corporations Act) or analogous person appointed to it or any of its property, being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason, taking any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the Corporations Act), entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or any analogous event.

Order means an order prepared by the Customer and sent to the Company requesting the supply of Goods.

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

PPSR means the Personal Property Securities Register established pursuant to the PPSA.

Secured Property means all Goods that are supplied to the Customer by the Company (whether now or in the future).

Security Interest has the meaning given in section 12 of the PPSA.

1 General

- The Company agrees to sell and the Customer agrees to purchase the Goods in accordance with these terms.
- These terms will apply to all Goods sold or provided by the Company to the Customer.
- These terms are deemed to be incorporated into all orders and contracts for the sale of Goods by the Company to the Customer, and will prevail over any inconsistent terms in any of the Customer's documents (including for the avoidance of doubt printed consignment notes or other documents, including even where one of the Company's representatives signs such a document) unless otherwise agreed by the Company in writing.
- If the Customer places an order or submits a purchase order (which must include a purchase order number) with the Company for Goods, or enters into a contract with the Company for the Goods and the Goods are delivered or provided to the Customer, or the Customer provides any payments to the Company, the Customer is taken to have accepted these terms.
- For the avoidance of doubt, if there is any conflict, apparent conflict or ambiguity in or between any of the following, they will be applied in the following descending order of precedence:
 - these terms as amended by customised term agreed between the Company and the Customer;
 - these terms and conditions; and
 - any terms and conditions incorporated by the Company into documents of sale including invoices.

2 Quotations and Orders

- Any quotation for Goods prepared by the Company is not an offer by the Company and it may be withdrawn or altered without notice. Unless the Company withdraws it, a quotation is valid for the stated period or if no period is stated, 30 days after the date of quotation.
- All Orders prepared by the Customer for the purchase of the Goods will constitute an offer and will be subject to acceptance by the Company in its discretion.
- Orders cannot be modified or cancelled after delivery of the Goods or after seven days from the date shown on the Customer's order, except in writing and then only with the prior written consent of the Company.

3 Price of Goods

- Prices for the Goods are as provided in the Company's current price list and are available on request from enquiries@olympus.com.au (**Price List**), which may be altered from time to time by the Company by giving the Customer 30 days notice.
- Unless the price quoted by the Company is expressly stated to be inclusive of any applicable GST, it will be deemed to be exclusive of GST.

4 Payment terms and default

- The Company will issue an invoice with respect to the Goods. For a Customer with an approved credit facility with the Company, payment for the Goods must be made within 30 days from the date of invoice or as otherwise agreed by the Company and the Customer. A Customer without an approved credit facility with the Company must pay for the Goods prior to delivery.
- All payments must be made by cheque, credit card or by direct credit to the Company's nominated bank account as stated on the invoice (or another method agreed by the Company in writing from time to time).
- The Company may in its sole discretion require immediate payment of all amounts outstanding under these terms (whether or not then due and payable) where:
 - the creditworthiness of the Customer is, in the Company's opinion, unsatisfactory or becomes unsatisfactory;
 - the Customer fails to comply with any one or more of its obligations under these terms; or
 - if one or more Insolvency Events occur.
- If the Customer has not paid the Company in full by the due date any monies owing to the Company, the Company may, in its sole discretion, without giving the Customer prior notice terminate these terms (or the applicable underlying contract),

seek to recover the Goods and resell or dispose of the Goods, without prejudice to any claims for damages against the Customer.

- The Company may charge the customer bona fide reasonable costs including the cost of any bank fees for dishonoured cheques, collection agency, solicitor or other legal or accounting costs incurred in the collection of monies overdue (on a full indemnity basis).
- Without limiting any other rights of the Company, any monies owing under these terms which are not paid when due will bear interest at the Default Rate, calculated daily and compounded monthly on and from the date such monies first become due to the Company.

5 GST

- Unless otherwise stated, the prices stated in these terms and the Price List are GST exclusive.
- In addition to the price for the Goods, the Customer must pay to the Company an amount equal to any GST the Customer must pay for any supply by the Company under these terms.
- The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the price for the Goods.
- The Customer indemnifies the Company for any loss that the Company may incur as a result of the incorrect payment or non payment of any GST and associated fees or penalties.
- If the Company becomes liable for any penalties or interest as a result of a late payment of GST, where that late payment is as a direct result of a failure of the Customer to comply with the terms of this clause 5, the Customer will pay to the Company an additional amount on demand equal to the amount of those penalties and interest.

6 Acceptance and Delivery

- All Goods will be delivered to the Customer by the Company to the address stipulated in the Order unless agreed otherwise in writing by both parties.
- The Customer will have the sole and absolute discretion as to the choice of carrier and method of carriage of the Goods. Should the Customer nominate its own carrier or specific non-standard delivery instructions, then all costs of delivery including insurance will be at the Customer's sole cost.
- For each Goods order the Company will charge a standard delivery fee of:
 - Medical Systems division orders less than \$1,000 a delivery fee of up to \$20.00 (exclusive of GST).
 - Camera and Audio division orders less than \$1,000 a delivery fee of up to \$20.00 (exclusive of GST).
 - Life Science and Industrial Solution division orders less than \$2,000 a delivery fee of up to \$30.00 (exclusive of GST).
- Any time quoted for delivery is an estimate only. The Customer must accept and pay for Goods even in the event of a delay in delivery.
- The Company may deliver the Goods in instalments and each instalment must be treated as a sale under separate terms. A failure of the Company to deliver any instalment will not entitle the Company to cancel the balance of the Order.
- Subject to clause 9, the Company is not liable for any loss or damage (including consequential loss or damage) arising from any failure to deliver or delay in delivery for any reason including, without limitation:
 - act of God, lightning, fire, flood, explosion;
 - strike, lock-out or other labour difficulty;
 - breakage, accident or other damage to or failure of machinery or equipment, whether of the Company's or of any person on which the Company is relying, directly or indirectly, to meet the Company's obligations to the Customer;
 - unavailability or shortage of raw materials, labour, power supplies, or transport facilities; or
 - failure or inability of the Company to obtain any licence or consent, comply with its obligations because of the effect (whether direct or indirect) of any applicable laws, orders, rules or regulations of any government or competent authority.
- If the Company determines that it is or may be unable to deliver the Goods within a reasonable time or at all the Order may be cancelled by the Company in its sole and absolute discretion by giving the Customer 30 days notice in writing of the Company's intention of doing so. Subject to clause 9, if an Order is cancelled, the Customer will have no claim against the Company for any loss or damage (including consequential loss or damage) arising from the cancellation.
- Subject to clause 9, the Customer must indemnify the Company against any claim, loss or damage suffered by the Company, or as a result of the Company becoming liable to any third party (directly or indirectly,) as a result of the Company or its employees, contractors or agents entering any premises for the purpose of delivering the Goods.

7 Discrepancy and return of Goods

- Subject to clauses 9 and 10, the Company is not obligated to accept in any case the return of Goods for credit.
- All claims for faulty, incorrect or defective goods must be submitted in writing to Olympus within 30 days of receipt of delivery of the Goods to the Customer. If a claim is not submitted, the Customer will be deemed to have accepted the Goods.
- All Goods that are returned to the Company by the Customer must be accompanied by the following:
 - a statement confirming why the Goods are being returned to the Company;
 - the Goods Return Authorisation Number available from orders@olympus.com.au; and
 - the original invoice number and date must be quoted.
- The Goods must be in their original saleable packaging and include all accessories, manuals and instructions. The Customer must bear the cost of the return freight and transport charges for returned Goods unless the Company otherwise agrees in writing.

8 PPSA

- The Customer acknowledges that these terms create a Security Interest in the Secured Property, as well as any proceeds received by the Customer from the sale of the Secured Property, for the purposes of the PPSA.
- The Customer consents to the Company effecting a registration on the PPSR in relation to the Security Interest arising under or in connection with these terms and the Customer agrees to provide all assistance required by the Company to facilitate registration and/or to enable the Company to exercise its rights in connection with the Secured Property.
- For any part of the Secured Property that is "inventory" in that it is:
 - held for sale or lease;
 - held to be provided under a contract for services;
 - held as raw materials or as work in progress; or

(d) used or consumed as materials, the Customer agrees not to allow any Security Interest to arise in respect of that Secured Property unless the Company has first perfected its Security Interest in that Secured Property. The Customer agrees to immediately notify the Company of any changes to its name or address.

4. The Customer will pay on demand any losses arising from, and any costs and expenses incurred in connection with registration of the Security Interest and/or any action taken by the Company to protect its Security Interest in the Secured Property.
5. The Customer waives the right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.

9 Implied terms

1. The Company acknowledges that where the supply of Goods are "consumer" supplies, under applicable State, Territory and Commonwealth law(s) (including, without limitation, the *Competition and Consumer Act 2010 (Cth)*) certain statutory express and implied guarantees and warranties (including, without limitation, the statutory guarantees under the Competition and Consumer Act will be implied into these terms (**Non- Excluded Guarantees**).
2. The Company acknowledges that nothing in these terms purports to modify or exclude the Non-Excluded Guarantees.
3. Except as expressly set out in these terms or in respect of the Non-Excluded Guarantees, the Company makes no warranties or other representations under any contract with the Customer or these terms. The Company's liability in respect of these warranties is limited to the fullest extent permitted by law.

10 Warranty and guarantees

A. Warranties

1. The Customer warrants and agrees they are not acquiring the Goods for the purpose of:
 - (a) re-supplying or using them or transforming them in trade or commerce in the course of:
 - (i) a process of production or manufacture; or
 - (ii) repairing or treating other goods or fixtures on land; or
 - (b) personal, domestic, household use or consumption, and the Customer is therefore not a "consumer" as defined by the Competition and Consumer Act.
2. Subject to clause 11, the Company warrants to repair or replace (at the Company's sole discretion) all Goods and their components manufactured by it which the Company, in its sole and absolute discretion, determines are defective in materials or workmanship under normal use and service, up to the expiration of the relevant item's warranty period. At the discretion of the Company, all other costs, including cartage and installation, must be paid by the Customer.
3. Where Goods are provided to the Company for investigation or repair, the risk in the Goods will remain with the Customer during any transit of the Goods to or from the Company. However, while the Goods are in the custody of the Company for investigation or repair, the Company agrees to accept the risk in the Goods.
4. Parts and labour for repair or replacement pursuant to clause 10A(2) will be provided by the Company during normal working hours at a place of business of the Company and the Company will have no liability for the cost of transportation of the Goods to such a place of business.
5. All rejected parts or defective parts will be the property of the Company to dispose of as it sees fit.

B. Guarantees

1. Goods that are classified as "consumer" goods come with guarantees that cannot be excluded under the Australian Consumer Law. If a Good is classified as a "consumer good", the Customer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable damage. The Customer is also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure. This warranty against defects is given in addition to other rights and remedies of the consumer under applicable laws.
2. The warranties given under these terms are given by the Company.
Olympus Australia Pty Ltd
Phone: (03) 9265-5400
Email: enquiries@olympus.com.au

11 Limitation of liability and indemnity

1. Other than as expressly provided for in clause 10 and subject to the limitations in clause 9, the Company, its employees, contractors and/or agents will not be liable for any loss or damage (including consequential loss or damage, which includes without limitation, loss of profits and loss of revenue) of any kind whatsoever, even if due to the negligence of the Company, its employees and/or agents.
2. Subject to clause 9 and so far as the law permits, the liability of the Company for a failure, will be limited to, other than in the case of a major fault, at the Company's option, to:
 - (a) the replacement of Goods;
 - (b) the repair of the Goods;
 - (c) the supply of equivalent Goods; or
 - (d) the cost of replacing or repairing the Goods or of acquiring equivalent Goods.
3. Subject to clause 10, the Customer acknowledges that it has not relied on any representations, description, or statement made by the Company in relation to the Goods, or the skill or judgement of the Company, its agents, contractors or employees, as to whether or not Goods are fit for a particular purpose.
4. The Customer acknowledges that it has relied solely upon its own inspection and skill and judgement in purchasing the Goods.
5. Subject to clause 10, the Customer indemnifies the Company from every liability, loss, damage, cost or expense directly or indirectly incurred or suffered or contributed to by any of the following:
 - (a) the Customer or the Customer employees' failure or any third party associated with the Customer failure to:
 - (i) adequately provide or display safety markings or safety information on or with the Goods;
 - (ii) comply with any law about the Goods or their use (including for example their sale, marketing, labelling or marking);
 - (iii) take any reasonable precaution to bring to the attention of any potential users of the Goods any dangers associated with the Goods;
 - (iv) take any reasonable precaution to detect any matters in relation to which the Company may become liable in any way (for example, under the Competition and Consumer Act);
 - (v) provide correct information to the Company;
 - (vi) use and maintain the Goods in accordance with the manufacturer's or the Company's instructions and or any other written materials supplied

with the Goods relating to the storage, installation, operation and servicing of the Goods; and

- (vii) use of Goods under conditions for which they were not designed.
 - (b) the Customer making any statement about the Goods (for example, about their performance or characteristics) without the Company's approval;
 - (c) the Customer or any third party's use or operation of the Goods;
 - (d) any negligence or breach of duty by the Customer or any party or any breach by the Customer or any third party of these terms;
 - (e) any workmanship or procedure performed by the Customer or a third party; and
 - (f) any misuse, neglect or alteration by the Customer, the Customer agents, the Customer employees or any third party of the Goods.
6. The limitations of liability in this clause 11 shall survive any termination or expiration of these terms.

12 Customer covenants

1. The Customers acknowledges and agrees that: all photographs, weights, illustrations, dimensions and any other particulars given in or accompanying a quotation or contained in descriptive literature which relates to the Goods are approximate only and that any deviations from these will not result in the Customer being able to make any claim against the Company for any loss or damage (including any consequential loss or damage) suffered by the Customer and which arises from such deviation.
 2. The Company accepts no responsibility whatsoever for any errors in dimensions, quantities or specifications in relation to Goods that have been delivered to the Customer by the Company in circumstances where the error arises from the Order that the Customer has placed with the Company.
 3. Any clerical errors caused by or on behalf of the Company (including, without limitation, computer or system errors which result in incorrect product codes, description or pricing printed on delivery documentation and invoices) will be corrected by the Company.
- ### **4. Confidentiality and Non-disclosure**
- (a) The Customer:
 - (i) shall not use any Confidential Information of the Company and or disclose for any purpose except to evaluate and engage in discussions, or to perform the recipient's obligations, concerning the purpose;
 - (ii) shall not disclose Confidential Information or permit Confidential Information to be disclosed, either directly or indirectly, to any third party without the Company's prior written consent; and having entered into a non-disclosure agreement with the recipient which agreement is at least as protective of Confidential information as shall not apply only to the extent the Recipient becomes legally compelled by law, regulation, court order requirement to disclose the Confidential Information these Terms; and
 - (iv) The Customer shall promptly notify the Company in the event of any use or disclosure of the Confidential Information in violation of these Terms of which the Customer becomes aware.
 - (b) The Customer shall not reverse engineer, disassemble or decompile any prototypes, software or other tangible objects that embody the Confidential Information.
5. The obligations of the Customer under these Terms shall survive for 10 (ten) years from the effective date or until such time as all Confidential Information disclosed hereunder lawfully qualifies as one of the exceptions described above through no action or inaction of the Customer, whichever comes later.
 6. The Customer agrees that any violation or threatened violation of these Terms will cause irreparable injury to the Company, entitling the Company to seek injunctive relief in addition to all legal remedies.

13 Title and risk

1. The risk in Goods will pass to the Customer immediately upon Delivery of the Goods by the Company (unless otherwise agreed in writing by the Company).
2. Title in the Goods will not pass to the Customer until, the Customer has:
 - (a) paid to the Company all amounts owing (and all cheques or negotiable instruments have been paid); and
 - (b) met all other obligations due by the Customer to the Company in respect of these terms and all other contracts with the Customer and the Company, and until the above obligations have been satisfied, the Customer acknowledges and agree that:
 - (c) the Customer holds the Goods as bailee only;
 - (d) the Customer must store the Goods supplied in such a way that it is clear that they are the Company's property;
 - (e) the Customer irrevocably authorises the Company to enter any premises where the Goods are kept and, if necessary, to use the Customer's name and to act on the Customer's behalf to recover the Goods; and
 - (f) if the Customer sells the Goods, the Customer acknowledges that such sale is by the Customer as agent for and on behalf of the Company and the Customer must hold the proceeds of such a sale in a separate account on trust for the Company and identified as such in the Customer's books.

14 Privacy and credit reporting

1. The Company will collect information in relation to the Customer, for the purpose of providing the Goods to the Customer in accordance with these terms, in accordance with the laws relating to the collection and disclosure of personal information under the *Privacy Act 1998 (Cth)* as amended from time to time.
2. Where the Goods are supplied to the Customer on credit the Customer irrevocably authorises the Company, its employees, contractors and agents to make such inquiries as the Company deems necessary to investigate the credit worthiness of the Customer from time to time including (without limitation) the making of inquiries of persons nominated as trade referees, the bankers of the Customer, or any other credit providers or credit reporting agencies (the **Information Sources**), and the Customer hereby authorises the Information Sources to disclose to the Company such information concerning the Customer which is requested by the Company from time to time.

15 Severability

Any provision of these terms which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make these terms enforceable, unless this would materially change the intended effect of these terms.

16 Assignment

The Customer must not assign its benefits or novate its obligations under these terms without the prior written consent of the Company. The Company may assign its rights and novate its obligations under these terms to another person without the consent of the Customer.

17 Variation

The Company is entitled to vary these terms at any time by giving the Customer 30 days prior written notice.

18 Entire agreement

These terms constitute the entire agreement between the Company and the Customer and supersede all prior representations, contracts, statements and understandings, whether verbal or in writing. All other terms and conditions are excluded to the fullest extent permitted by law including any terms and conditions which the Customer may from time to time seek to impose.

19 Waiver

1. A right of the Company may only be waived in writing, signed by the Company.
2. No other conduct of the Company (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right.
3. A waiver of a right by the Company on one or more occasions does not operate as a waiver of that right if it arises again.
4. The exercise of a right by the Company does not prevent any further exercise of that right or of any other right.

20 Governing law

1. These terms will be governed by and construed in accordance with the laws in force in Victoria, Australia.
2. Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Victoria, Australia, and any court that may hear appeals from any of those courts, for any proceedings in connection with these terms, and waives any right it might have to claim that those courts are an inconvenient forum.