

## Paul Hartmann Pty Limited

### TERMS AND CONDITIONS

In these conditions "Hartmann" means Paul Hartmann Pty Ltd or any related entity; "customer" means the person, firm, corporation, government or semi-government authority purchasing goods and/or services from Hartmann; and "conditions" means these terms and conditions.

#### 1. GENERAL

- 1.1 These conditions are amended from time to time, will, apply to the supply of goods and/or services by Hartmann to the customer, constitute a contract between Hartmann and the customer, prevail over any other conditions in relation to the supply of goods and/or services by Hartmann and will apply to the exclusion of all other agreements and prior representations, unless subsequently evidenced in writing by Hartmann and the customer.
- 1.2 Hartmann is not bound by any terms or conditions contained in any document of the customer delivered to Hartmann. The customer is bound by these conditions notwithstanding anything to the contrary in any document delivered by the customer to Hartmann.
- 1.3 Hartmann reserves the right to vary these conditions from time to time.
- 1.4 No agent or representative of Hartmann is authorised to make any representations, warranties, conditions or agreements not expressly confirmed by Hartmann in writing and Hartmann is not bound in any way by such unauthorised statements nor can such statements be taken to form part of these conditions.

#### 2. PRICE VARIATION

- 2.1 Subject to clause 2.2, the price shall be as quoted in writing by Hartmann. If a price is not quoted then it shall be in accordance with Hartmann's current price list. Verbal quotations are subject to written confirmation.
- 2.2 Hartmann reserves the right on 30 days notice to alter the price of goods and/or services whether or not a deposit or part payment has been received by Hartmann and to invoice the customer for any subsequent extra amount payable.

#### 3. PAYMENT

- 3.1 Unless otherwise agreed in writing by Hartmann, payment is to be made to Hartmann for goods and services within thirty (30) days from the date of invoice.
- 3.2 If the customer fails to comply with the terms of payment in clause 3.1, then the customer agrees that Hartmann is:
  - (a) entitled to impose a late premium charge amounting to two (2) per centum per month on all undisputed monies and charges owing by the customer from time to time and the customer will be liable for all costs including GST relating to any legal action taken by Hartmann to recover monies due from the customer; and
  - (b) hereby irrevocably authorised by the customer to enter the customer's premises (or any premises under the control of the customer or as agent of the customer in which the goods are stored at such premises).
- 3.3 If Hartmann does take possession of the goods pursuant to clause 3.2(b) and is unable to resell the goods at the same price or more as was invoiced to the customer by Hartmann, then Hartmann shall be entitled to make claim, demand or institute, if necessary, an action to recover any loss or damage sustained by Hartmann due to Hartmann not being able to obtain the invoiced price plus the added expenses incurred by Hartmann as a result of non-payment by the customer.

3.4 Hartmann reserves the right to not supply, discontinue or suspend the supply of goods and/or services to any customer at any time.

3.5 In the event of partial delivery of the goods and/or services, invoices may be issued by Hartmann and will be payable by the customer in respect of such partial delivery.

#### 4. **DELIVERY**

4.1 Unless Hartmann otherwise agrees in writing, GST, delivery, carriage insurance, handling, storage and packaging and any other expenses relating to the goods shall be charged to and paid by the customer.

4.2 Hartmann will make all reasonable efforts to have the goods delivered to the customer on the date agreed between the parties, but time is not of the essence of this contract and Hartmann will not in any event be liable for any loss or damage directly or indirectly sustained from any delay in delivery or failure to give notice of any such delay.

4.3 Hartmann reserves the right to deliver the goods by instalments at its absolute discretion and in such circumstances the customer shall accept delivery of such goods by instalments.

4.4 Claims by the customer for short, damaged or incorrect deliveries must be made within seven (14) days from the date of invoice.

4.5 Minimum handling fee is applicable for all orders placed \$250.00 and under unless otherwise stated. The surcharge that will be applied is \$15.00 for Metro and \$25.00 for country.

#### 5. **RETURN OF GOODS AND WARRANTY**

5.1 Hartmann warrants that if defects appear in goods, under proper and normal use, it will, at its option, replace the good or refund the purchase price. This warranty is subject to the customer making a claim in writing to Hartmann within 3 months of the date of the invoice of the order.

5.2 The standard warranty period of all Hartmann goods is 3 months from the date of invoice.

5.3 Returned goods must be accompanied by an advice note stating the original invoice number(s) relating to the goods and the nature of any claimed defect, together with such further information as Hartmann may require.

5.4 The warranty in clause 5.1 does not apply in circumstances where:

- (a) The goods are not defective;
- (b) The goods were used for a purpose other than for which they were intended;
- (c) The goods were repaired, modified or altered by any person other than Hartmann;
- (d) The defect has arisen due to misuse, neglect or accident;
- (e) The goods have not been stored or maintained as recommended by Hartmann;  
or
- (f) The customer is in breach of any of these conditions.
- (g) Medical products past their expiry dates

5.5 Where the customer returns goods, Hartmann may refuse to replace or refund the purchase price of the goods and return them to the customer at the customer's cost.

- 5.6 Where goods are incorrectly ordered by the customer, supplied and subsequently returned with the consent of Hartmann, a restocking fee of ten (10) percent of the purchase price of the goods shall be paid together with any delivery fee and GST incurred by Hartmann as a result thereof within thirty (30) days from the date of invoice.
- 5.7 If Hartmann is of the opinion that goods when returned are otherwise than in the same condition as when they were delivered to the carrier or directly to the customer a charge equal to the cost necessary to restore the goods to their original condition shall be payable by the customer upon demand by Hartmann.
- 5.8 If goods are returned to Hartmann which Hartmann is unable to resell to a third party or resell for the same amount as was sold to the customer, then Hartmann may charge the customer an amount equal to the loss incurred as a result of the customer returning the goods.

## 6. **OWNERSHIP AND RISK**

- 6.1 Hartmann will retain the full legal and beneficial ownership and title in and to all the goods delivered to the customer by Hartmann until the customer has paid to Hartmann the full amount due on all outstanding invoice(s) to Hartmann. Until then, the customer will, hold and sell the goods as agent for Hartmann, ensure that the goods are kept in good and serviceable condition, secure the goods from risk, damage and theft, keep the goods fully insured against such risks and indemnify Hartmann for any loss or damage
- 6.2 Any proceeds received by the customer from the resale of the goods shall be held by the customer as trustee for Hartmann to the extent of the unpaid invoiced price of those goods and the proceeds of the sale shall be forwarded to Hartmann in full as soon as is reasonably practicable after receipt by the customer. Where the proceeds of sale are less than the amount owing by the customer to Hartmann, such proceeds shall be applied in practical satisfaction to the invoiced price or amount outstanding until all monies owing to Hartmann for all goods and services supplied by Hartmann to the customer have been paid for in full by the customer to Hartmann.
- 6.3 After the goods leave Hartmann's premises they shall be at the risk of the customer and any damage to the goods shall be at the expense of the customer.

## 7. **LIABILITY AND INDEMNITY**

- 7.1 Hartmann is not liable for any direct or indirect loss or damage suffered by the customer or any third party, howsoever caused. Hartmann will not be liable for any loss or damage directly or indirectly suffered by the customer or any third party where Hartmann has failed to meet any delivery date or cancels or suspends the supply of goods or services.
- 7.2 To the extent permitted by law and subject to these conditions, Hartmann will not be liable or responsible for any loss or damage, cost or expense suffered by the customer resulting directly or indirectly from any failure by Hartmann to fulfil any of the conditions herein.
- 7.3 To the full extent permitted by law the customer agrees to indemnify and at all times hereafter to keep indemnified and hold Hartmann, its officers, employees or contractors, and each of them harmless against all claims for loss or damage (whether as a result of negligence or otherwise) to the extent any claim for loss or damage is caused by the customer's use, possession, ownership or resale to a third party of the goods. The indemnity in this clause shall survive the termination of this contract.

## 8. **GOVERNING LAW AND JURISDICTION**

These conditions and the contract governed thereby shall be governed by and construed in accordance with the laws from time to time, of the State of New South Wales.

## 9. **FORCE MAJEURE**

To the extent permitted by law the customer releases Hartmann from all and any liability for and in relation to or occurring out of any failure or transaction in performance of its

obligation hereunder done in part or in whole to any cause whatsoever beyond Hartmann's reasonable control.

10. **WAIVER**

No waiver of any breach of these conditions shall be held or construed to be a waiver of any other subsequent or antecedent breach of these conditions.