

SCHEDULE 2: GENERAL TERMS AND CONDITIONS

1. TERMS OF CONTRACT

- 1.1 Any Goods or services supplied to you shall be subject to these Terms unless we agree in writing to change them. If you accept Goods or services from us, those actions by you will be deemed to be acceptance of these Terms, notwithstanding anything that may be stated to the contrary in your enquiries or your order.
- 1.2 Nothing in these Terms requires us to provide any Goods or services to you.

2. PRICE

- 2.1 Unless otherwise agreed in writing all freight, insurance, delivery and travel charges will be additional to any price estimated. Unless otherwise agreed in writing any estimated price may be altered prior to delivery of Goods or provisions of services to you, if our costs fluctuate materially. We may withdraw any estimate before it is accepted, and in any event any estimate will lapse 30 days after it is given without notice. GST will be payable by you as an additional amount on all prices and charges.
- 2.2 The price for Goods and services will be either as estimated to you in writing or, if no written estimate is provided, pursuant to our standard charges applying at the time.

3. PAYMENT

- 3.1 Unless otherwise agreed in writing you must pay for Goods and services by the 20th day of the month following the date of the invoice relating to those Goods or services.
- 3.2 If full payment for the Goods or services is not made on the due date or you breach any other Terms, then without prejudice to any other remedies available to us:
- (a) We may cancel or withhold supply of further Goods or services;
 - (b) Interest on monies overdue shall be charged on a daily basis and be calculated by adding 3% per annum to the overdraft rate payable by us to our bankers at the time of and during such default, and interest shall continue to accrue both before and after judgment.
 - (c) You shall be responsible for all costs incurred by us in recovering such monies.
- 3.3 We may from time to time vary your credit limit with us at our discretion, in relation to further purchases of Goods or services. If any acquisition would be in excess of your credit limit, we reserve the right to require payment in cash prior to delivery of the Goods or services, of the amount by which the cost exceeds your credit limit.
- 3.4 We shall have a full right of set-off with respect to amounts owed by you to us under these Terms, in relation to any monies owing by us, or any of our related companies to you howsoever arising. Your obligation under these Terms shall be to pay the full amount owing under these Terms free of all deductions or rights of set off.

4. OWNERSHIP

- 4.1 Ownership in the Goods shall not pass upon delivery, but shall remain with us until full payment for all monies owing by you to us in respect of such Goods has been made. Until all monies have been paid:
- (a) You hold the Goods supplied as fiduciary for us and will deal with them as agent for and on behalf of us (but will not hold yourself out as our agent to any third parties);
 - (b) You shall store our Goods separately consistent with the Goods being our property, and ensure such Goods are able to be separately identified;
 - (c) If you resell the Goods supplied the proceeds of any resale will belong to us, and you will pay the same into a separate account for which separate records are kept, and all claims which you hold against third parties will be handed over to us;
 - (d) You irrevocably give us and our agents the right to enter your premises, to remove any of the Goods supplied and resell them;
 - (e) If any of the Goods become part of a product or mass (through, or by whatever process) such that the identity of those Goods is lost in the product or mass, the security interest created by this clause continues in the product or mass in accordance with the PPSA;
 - (f) If any of the Goods are installed in, or affixed to, and become an accession to, other Goods, the security interest continues in the accession in accordance with the PPSA;
 - (g) You agree to indemnify us (and our agents) against any liability incurred in connection with such entry and removal.

5. LIENS

- 5.1 All Goods delivered to or in our possession, for repair or servicing are subject to a lien for any sums owing by you to us, for repairs or servicing carried out on the Goods. Where we retain a lien over any of your Goods and you are more than three months overdue with any monies owing, we without further notice may sell the Goods in such a manner and such terms as we think fit, and may from sale proceeds repay the amounts owing to us for work done, and any expenses of sale.

6. RISK AND DELIVERY

- 6.1 Unless otherwise agreed, you shall be responsible for the cost of and arranging transportation of all Goods. If we are delivering the Goods to you, we will use our reasonable endeavours to see that deliveries are made according to schedule, but shall not be responsible for delivery delays due to causes beyond our reasonable control.
- 6.2 Risk in respect of the Goods sold shall pass to you when the Goods are delivered to you or your carrier, or the time you pay for the Goods, whichever is the earlier. Risk in the Goods in our possession for servicing, remains with you. It is your responsibility to insure the Goods from the time risk in those Goods passes to you, even if we have arranged transportation of the Goods.

7. RETURN OF GOODS FOR CREDIT

- 7.1 The acceptance of goods for credit shall be at the sole discretion of Connetics and a 15% restocking fee shall apply. Goods accepted for credit on return shall be returned freight paid, accompanied by the relevant packing slip or invoice number, in the original (undamaged) packaging, with all the relevant manuals and in a sealable condition. Goods specifically imported, procured or manufactured on behalf of the buyer can only be returned on such terms and conditions as Connetics may agree.

8. COMPLIANCE WITH ACTS AND REGULATIONS

- 8.1 You shall, where you grant access to us over your property for the purposes of our providing Goods or services to you, ensure compliance with all legislation and regulations in relation to the property, including ensuring the property is in a safe state for us to undertake any necessary work over your property.
- 8.2 If we have any concerns regarding the safety of our employees, in relation to the access and use of your property, we shall be entitled to halt all work on your property, until such time as our safety concerns have been addressed. In that case you shall be responsible for payment of work undertaken by us to that point.

9. WARRANTIES

- 9.1 Details of warranties available, if any, will be provided upon request but are subject to clauses 9.2 and 9.3. Except to the extent of written warranties given by us to you, all warranties and representations in respect of Goods sold or services supplied are excluded to the extent permitted by law, including those expressed or implied by law. Where any written warranty conflicts with clauses 9.2 or 9.3 the provisions of clauses 9.2 and 9.3 as applicable shall prevail.
- 9.2 We shall not be liable, whether in contract, tort (including negligence) or otherwise:
- (h) Where you have altered or modified the Goods, mis-applied the Goods, or have subjected them to any unusual or non-recommended use, servicing or handling;
 - (i) For loss or damage caused by any factors beyond our control;
 - (j) For any indirect or consequential loss or damage of any kind or for any loss of profit or revenue;
 - (k) For any second hand Goods;
 - (l) Where the terms of any written warranty have not been complied with, or any manufacturers' handbook provided to you has not been complied with, or any reasonable and lawful instructions notified by us to you have not been complied with.
- 9.3 Our total liability under any warranty for defective or damaged Goods supplied by us or in relation to the provision of services or other breach of these Terms is limited at our option to either:
- (m) Replacing or repairing the defective or damaged Goods; or
 - (n) Refunding the price of the defective or damaged Goods or provision of service.

9.4 Any Goods returned to us must be returned freight paid. You can claim for any reasonable freight charges where Goods are defective. Where we elect to repair defective Goods, we will use all reasonable endeavours to repair the Goods, as soon as possible, but will not be liable for any delay in completing the repairs.

10. GENERAL TERMS

10.1 Mediation:

If a dispute arises, the parties may agree to settle the dispute by mediation before resorting to litigation or arbitration.

10.2 Cancellation:

You may not cancel any order for Goods or services or part of it without our written consent. If you do so, in addition to any other rights we may have, we may retain any deposit paid. We may terminate or suspend any of our obligations to you under these Terms or any other contract, where:

(o) you are in breach of these Terms; or

(p) you commit any act of bankruptcy or insolvency, go into liquidation, statutory management, receivership or voluntary administration, seek any compromise with your creditors, or are dissolved (other than for the purposes of a solvent reconstruction).

10.3 Waiver or Variation:

Waiver or variation of these Terms by us will only be effective if given in writing by an authorised person. If we waive any of these Terms the waiver will not affect our rights under these Terms at any future time. We may vary these Terms from time to time by giving written notice to you. Any varied Terms will apply to the provision of Goods and services after such notice is given.

10.4 Governing Law:

These Terms will be interpreted in accordance with and governed by the laws of New Zealand and the New Zealand courts will have non-exclusive jurisdiction in respect of all matters between us.

10.5 The Privacy Act:

You and any guarantor (if relevant) authorise us to collect and hold personal information from any source we consider appropriate to be used for the purposes of determining credit worthiness, for communicating promotional activities and product information by us, for debt collection purposes, or for any other related purpose. You further authorise us to disclose personal information held by us for the purposes set out above to any other parties. You understand that you have a right of access and may request correction of personal information held by us about you.

10.6 Consumer Guarantees Act (CGA):

If the CGA applies, these Terms shall be read subject to your rights under the CGA, provided that where you are acquiring Goods or services for business purposes the CGA shall not apply.

10.7 PPSA:

10.7.1 Security:

You acknowledge and agree that:

(a) by assenting to these Terms, you grant a security interest (by virtue of the retention of title clause in clause 4 of these Terms) to us in all Goods previously supplied by us to you (if any) and all after acquired Goods supplied by us to you (or for your account); and

(b) these Terms shall apply notwithstanding anything, express or implied, to the contrary contained in your order.

10.7.2 Financing statement:

You undertake to:

(a) sign any further documents and/or provide any further information (which information you warrant to be complete, accurate and up-to-date in all respects) and assistance which we may reasonably require to enable registration of a financing statement or financing change statement on the Personal Property Securities Register;

(b) not register a financing change statement or a change demand in respect of the Goods (as those terms are defined in the PPSA) without our prior written consent; and

(c) give us not less than 14 days prior written notice of any proposed change in your name and/or any other change in your details (including, but not limited to, changes in your address, facsimile number, trading name or business practice).

10.7.3 Waiver and Contracting Out:

(d) Unless otherwise agreed to in writing by us you waive your right to receive a verification statement in respect of any financing statement or financing change statement relating to the security interest.

(e) To the maximum extent permitted by law, you waive your rights and, with our agreement, contract out your rights under the sections referred to in section 107(2)(c) to (i) of the PPSA.

(f) You agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms and, with our agreement, contract out of such sections.

(g) You and we agree that section 109(1) of the PPSA is contracted out of in respect of particular Goods if and only for as long as we are not the secured party with priority over all other secured parties in respect of those Goods.

10.8 Non-solicitation

You undertake that you will not (without our prior written consent) for a period of 12 months from the time we provide any Goods or services to you, directly or indirectly solicit the services of any persons employed by us who have been providing services or otherwise connected with this contract.

10.9 Defined Terms:

"Goods" means all Goods supplied from time to time by us to you, provided that:

(q) where the Goods supplied are your Inventory, then all references to Goods in these Terms shall, in respect of those Goods, be read as references to Inventory; and

(r) where the Goods supplied are not Inventory then all references to Goods in these Terms shall, in respect of those Goods, mean the Goods described in any one or more of the relevant order form, packing slip or invoice (or its equivalent, whatever called) relating to those Goods, on the basis that each such order form, packing slip or invoice (or its equivalent) shall be deemed to be incorporated in, and form part of, these Terms.

"Inventory" has the meaning given to that term in the PPSA.

"PPSA" means the Personal Property Securities Act 1999 as amended or substituted from time to time.

"Terms" means these terms of trade.

Unless the context otherwise requires, words and phrases shall have the meanings given to them in, or by virtue of, the PPSA.