

# APPLICATION FOR TRADE CREDIT TERMS WITH SIGMA COMPANY LIMITED (ACN 004 132 923)

## Trading Terms

### SIGMA GROUP STANDARD TERMS AND CONDITIONS OF SUPPLY ("Trading Terms")

All references to "Sigma Group" in this Sigma Group Trade Credit Application form (attached) to the fullest extent legally possible, include Sigma Company Limited (ABN 44 004 132 923) and each of its related bodies corporate (as defined in the Corporations Act 2001 (Cth)), agents, assigns and successors. Sigma Company Limited holds on trust for all the Sigma Group entities the benefit of all covenants, agreements, guarantees and indemnities made or issued by the Customer and by related entities of the Customer.

**By completing this application form, you will be applying to open a trade credit account with Sigma Company Limited (ABN 44 004 132 923) ("Sigma").**

#### 1. Operation

- (a) These terms and conditions ("Terms") form part of any agreement to supply Goods to the Customer by the Company.
- (b) All Goods supplied by the Company are supplied on these Trading Terms.
- (c) By submitting a Purchase Order to the Company, the Customer will be deemed to agree that these Trading Terms apply to the exclusion of all others.
- (d) Time is of the essence in respect of all the Customer's payment obligations.

#### 2. Definitions

- (a) **Additional Fees** means any fees charged by the Company to the Customer in relation to a particular Purchase Order in respect of one or more of the following at the rates set out in the Company's price list provided to the Customer prior to submitting their first Purchase Order and as amended by the Company from time to time with prior written notice to the Customer:
  - (i) Order service fee;
  - (ii) Account maintenance fee;
  - (iii) Non-standard delivery freight fee;
  - (iv) Missed order cut off fee;
  - (v) Telephone orders fee;
  - (vi) Dishonour fee;
  - (vii) Tote loss fee;
  - (viii) Dangerous drug fee;
  - (ix) Return fee;
  - (x) Paper invoice fee;
  - (xi) Credit card payment fee; and
  - (xii) PDE rental fee.
- (b) **Agreement** means these Trading Terms together with any Trade Credit Application by the customer and any associated Personal Guarantee.
- (c) **Approved Credit Limit** means the dollar amount specified by the Company in its acceptance of the Customer's Trade Credit Application (as amended by notice to the Customer in writing from time to time).
- (d) **Company** means the relevant company in the Sigma Group with whom a Purchase Order is placed.
- (e) **Corporations Act** means the Corporations Act 2001 (Cth).
- (f) **Credit Return Policy** means the Company's credit return policy as amended from time to time which can be accessed at [www.sigmahhealthcare.com.au](http://www.sigmahhealthcare.com.au) and Sigma Connect.
- (g) **CSO** means Community Service Obligation.
- (h) **Customer** means the person described as 'the customer' in the applicable Trade Credit Application or the person to whom the Company otherwise supplies Goods from time to time.
- (i) **Force Majeure Event** means in relation to a party any of the following events:
  - (i) acts of God, war, hostilities, public disorder, future pandemic (excluding COVID-19), epidemic, acts of enemies, sabotage;
  - (ii) general strikes (which expression shall be deemed to include strikes or other industrial disputes applying to a number of companies and not limited to any party hereto) lockouts, labour disturbances or stoppages (whether actual or threatened) applying to a number of companies and not limited to any party hereto which could not have been prevented or overcome by the exercise of a reasonable standard of care and diligence by the affected party;
  - (iii) administrative or executive orders, regulations or acts of any government or government instrumentality or official; and
  - (iv) accident, breakdown or injury to or expropriation or requisition of any manufacturing, storage, delivery or transportation facility, the consequences of which:
    - (v) are beyond the control of the party claiming relief (Affected Party) and were not caused or contributed to by the Affected Party; and
    - (vi) could not have been prevented, overcome or remedied by the exercise by the Affected Party of a standard of care and diligence consistent with that of a prudent and competent person under the circumstances (including the expenditure of reasonable sums of money and the application of technology known to such a prudent and competent person).
- (j) **Goods** means any goods supplied by the Company to the Customer.
- (k) **Government Agency** means any government or any public, statutory, governmental (including a local government), semi-governmental, local governmental or judicial body, entity, department or authority and includes any self-regulatory organisation established under statute.
- (l) **GST Act** means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- (m) **GST** has the meaning given to that term in the GST Act.
- (n) **Guarantor** means the guarantor(s) specified in the Personal Guarantee.
- (o) **Insolvency Event** means, in relation to a party to the Agreement, any one or more of the following events or circumstances occurring in relation to the party (or any person comprising the party):
  - (i) being in liquidation or provisional liquidation or under administration;

- (ii) having a controller (as defined in the Corporations Act) or analogous person appointed to it or any of its property;
- (iii) being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (iv) being unable to pay its debts or being otherwise insolvent;
- (v) becoming an insolvent under administration, as defined in section 9 of the Corporations Act;
- (vi) entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors; and
- (vii) any analogous event or circumstance under the laws of any jurisdiction.

- (p) **Intellectual Property Rights** means all present and future intellectual and industrial property rights in the Goods conferred by Law and wherever existing, including:
    - (i) the Trade Identification;
    - (ii) patents, designs, copyright, rights in circuit layouts, know how, domain names, inventions, trade secrets and any other rights subsisting in the results of intellectual effort in any field, whether or not registered or capable of registration;
    - (iii) any application or right to apply for registration of any of these rights;
    - (iv) any registration of any of these rights or any registration of any application referred to in clause 2(p)(iii); and
    - (v) all renewals and extensions of these rights.
  - (q) **Invoice** means an invoice issued by the Company to the Customer in accordance with clause 11(a) or clause 11(b).
  - (r) **Modern Slavery** has the same meaning given in the Modern Slavery Legislation.
  - (s) **Modern Slavery Legislation** means the Modern Slavery Act 2018 (Cth) and any other modern slavery act that is in force from time to time in any jurisdiction in which the Sigma operates, and any associated regulations and codes (as amended from time to time).
  - (t) **Law** means:
    - (i) principles of law or equity established by decisions of courts;
    - (ii) statutes, regulations or by-laws of the Commonwealth, a State, a Territory or a Government Agency; and
    - (iii) requirements and approvals (including conditions) of the Commonwealth, a State, a Territory or a Government Agency that have the force of law.
  - (u) **Ordered Goods** means the goods specified by the Customer in a Purchase Order that has been accepted by the Company.
  - (v) **PBS** means Pharmaceutical Benefits Scheme.
  - (w) **PDE** means Prescription Drug Event.
  - (x) **Personal Guarantee** means any personal guarantee entered into by the guarantor specified in the guarantee with the Sigma Group.
  - (y) **Personal Information** means information of or relating to a person and, where applicable, includes 'personal information' (as that term is defined in the Privacy Act 1988 (Cth)) of or relating to that person.
  - (z) **Privacy Collection Statement** refers to the consent that the Customer must read and sign upon the completion of its Trade Credit Application, as annexed to these Trading Terms.
  - (aa) **Privacy Policy** means the Company's Privacy Policy available on the Company's website <https://sigmahhealthcare.com.au/privacy-policy/>, as amended from time to time.
  - (bb) **Purchase Order** means an order for Goods that is in the form specified by the Company from time to time, whether written, verbal or otherwise.
  - (cc) **Related Body Corporate** has the meaning given to that term in the Corporations Act.
  - (dd) **Sigma Group** means Sigma Company Limited ABN 44 004 132 923 and each of its Related Body Corporates, agents, successors and assigns (as applicable).
  - (ee) **Special Condition** means the special conditions set out in the Customer's Trade Credit Application and approved by the Company from time to time.
  - (ff) **Trade Credit Application** means the application by the Customer to open a credit account with the Sigma Group.
  - (gg) **Trade Identification** means the trademarks, service marks, symbols, branding, logos and other trade indicia (whether registered or not) owned or controlled by the Company and used in connection with the business conducted by the Company.
- #### 3. Orders
- (a) The Customer must order the Goods from the Company by submitting a Purchase Order to the Company.
  - (b) Where the Company has not commenced processing a Purchase Order, the Customer may cancel the Purchase Order by calling the Company's customer service team on [insert telephone number]. Once the Company has commenced processing a Purchase Order, the Purchase Order cannot be cancelled, or delivery deferred, without the Company's consent.
  - (c) The Company is not bound by a Purchase Order unless and until it accepts the Purchase Order, either by notifying the Customer of that acceptance or by commencing performance of the Purchase Order.
  - (d) To the fullest extent permitted by Law, the Company is not obliged to accept any Purchase Order.
  - (e) Once the Company accepts a Purchase Order, the parties must comply with that Purchase Order in accordance with these Trading Terms.
- #### 4. Delivery
- (a) The Company will make reasonable efforts to deliver Ordered Goods expeditiously. However, the Company will not be liable for delays caused by factors beyond its control, including third-party actions or omissions.

- (b) Subject to clause 4(c), the Company, as an approved CSO distributor, must supply any brand of any PBS medicine within 24 hours from the regular order cut off time, unless the community pharmacy specifies otherwise, or the location of the community pharmacy falls outside the requirement to supply PBS Medicines.
- (c) The Company reserves the right to make part deliveries of any Purchase Order and each part delivery constitutes a separate sale of Goods upon these Trading Terms.
- (d) The Customer must inspect all Goods upon delivery and must in accordance with the Company's Credit Return Policy give notice to the Company of any matter or thing by which the Customer alleges that the Goods are not in accordance with the Purchase Order. If no such notice is provided and, to the extent permitted by Law, the Goods are deemed to have been delivered and accepted by the Customer.
- 5. Return of Goods**
- (a) To the extent permitted by Law, the Company is not under any duty to accept Goods returned by the Customer and will do so at its discretion only in accordance with and upon compliance by the Customer with the Company's Credit Return Policy.
- 6. Title**
- (a) Title to all Goods supplied by the Company to the Customer remains with the Company and does not pass to the Customer until the price for those Goods and all other moneys owing by the Customer to the Company on any account whatsoever (Amount Outstanding) is paid to and received in full by the Company in cleared funds.
- (b) Until title to Goods supplied by the Company to the Customer passes to the Customer in accordance with clause 6(a), the Customer must:
- store the Goods separately from the Customer's own goods and those of third parties, to enable them to be readily identified as the Company's property;
  - hold the Goods as the bailee and fiduciary agent of the Company;
  - not supply or sell the Goods to any person, other than with the Company's prior written consent or in the ordinary and usual course of the Customer's business, it being acknowledged that any such supply or sale by the Customer will be as the bailee and fiduciary agent of the Company;
  - when requested by the Company (acting reasonably), allow the Company to enter the premises where the Goods are stored to inspect the Goods and provide to the Company the consent of any person whose consent is required for that entry;
  - keep records that relate to the Goods separately identifiable and readily distinguishable from those that relate to any other goods in its possession;
  - not allow any person to have or acquire any encumbrance or security interest in the Goods; and
  - keep the Goods insured against theft, damage and destruction (and if the Customer fails to insure the Goods, the Company may do so and the Customer must reimburse the Company for the reasonable cost of insurance).
- (c) If the Customer sells or otherwise disposes of the Goods supplied by the Company before title to them has passed from the Company to the Customer, the Customer acknowledges and agrees:
- that part of the proceeds of any sale or dealing as is equal to the Amount Outstanding or if the proceeds of sale or dealing are less than the Amount Outstanding, the whole of the proceeds of sale or dealing (in either case, the Company's Entitlement) must be held by the Customer in a separate identifiable account on trust for the Company and must not be mixed with any other moneys of the Customer; and
  - the Customer must account to the Company for the Company's Entitlement, until all liability of the Customer to the Company has been discharged.
- (d) To the extent permitted by Law, the Customer has no right to sell the Goods or deal with the Goods if:
- an Insolvency Event occurs in relation to the Customer or the Guarantor;
  - the Customer breaches the Agreement and fails to remedy the breach within 5 Business Days after receiving notice from the Company requiring the breach to be remedied; or
  - the Agreement is terminated for any reason.
- (e) If the Customer loses its right to sell or deal with the Goods under clause 6(d), then the Customer must return the Goods to the Company on written demand. If the Customer does not return the Goods to the Company within 24 hours after receipt of the demand, then without limiting any other rights or remedies the Company may have:
- the Company may, as agent of the Customer, enter the premises where the Goods are located and do all things necessary to retake possession of the Goods, without liability for trespass or any resulting damage;
  - the Company may keep or resell any of the Goods repossessed;
  - the Customer is liable for all costs associated with the exercise by the Company of its rights under this clause 6(e), which costs are payable to the Company on demand; and
  - the Customer indemnifies and must keep indemnified the Company against all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis) that may be brought against the Company or which the Company may pay, sustain or incur as a direct or indirect result of the exercise by the Company of its rights under this clause 6(e).
- 7. Personal Property and Securities Act**
- (a) The Customer acknowledges that the Company may register its interest in the Goods pursuant to section 12 of the Personal Property Securities Act 2009 (Cth) ("PPSA") and it will not do anything to prevent the Company registering its interest in the Goods.
- (b) The Customer agrees to do all things and execute all deeds, instruments or other documents as may be necessary or desirable to give full effect to the provisions of these Trading Terms and the rights of the Company in respect of the Goods under the PPSA.
- (c) The Customer agrees that the Goods are not intended to be used by the Customer, and will not be used by the Customer for personal, household or domestic purposes.
- (d) The Customer agrees that nothing in sections 117(3) or 130(1)(a) of the PPSA will apply to these Trading Terms, a contract which arises from the acceptance of the Purchase Order or a security interest which is created or arises under these Trading Terms or any of those contracts.
- (e) The Customer waives any right which the Customer may have to:
- receive a notice under section 95 of the PPSA;
  - receive a notice under sections 118(1)(b)(i), 121(4), 123(2), 134(1) and 135 of the PPSA;
  - complain of, or seek redress for, any damage, cost or inconvenience caused by us taking apparent possession of Goods under section 126 of the PPSA;
  - object to our proposal to purchase Goods under section 129(2)(b) of the PPSA;
  - receive a statement of account under sections 132(3)(d) or 132(4) of the PPSA;
  - redeem Goods under section 142 of the PPSA or reinstate a security agreement under section 143 of the PPSA; and
  - receive a notice of verification statement under section 157 of the PPSA.
- 8. Price**
- Unless otherwise agreed in writing, the price payable by the Customer for the Goods is the price specified in the Company's current price list at the time of ordering made available to the Customer at Sigma Connect. The Customer should check the price list prior to submitting a Purchase Order as prices shown on the price list may change frequently.
- 9. GST**
- (a) In this clause 9:
- the expressions Consideration Input Tax Credit, Recipient, Supply, Tax Invoice and Taxable Supply have the meanings given to those expressions in the GST Act; and
  - Supplier means any party treated by the GST Act as making a Supply under the Agreement.
- (b) Unless otherwise expressly stated, all prices or other sums payable or Consideration to be provided under or in accordance with the Agreement are exclusive of GST.
- (c) If GST is imposed on any Supply made under or in accordance with the Agreement, the Recipient of the Taxable Supply must pay to the Supplier an additional amount equal to the GST payable on or for the Taxable Supply, subject to the Recipient receiving a valid Tax Invoice in respect of the Supply.
- (d) Payment of the additional amount must be made at the same time and in the same way as payment for the Taxable Supply is required to be made in accordance with the Agreement.
- 10. Account and Default Fees**
- (a) Unless otherwise agreed in writing, the Company may charge a monthly account keeping fee where the value of the Customer's monthly total purchases does not exceed the Company's minimum monthly purchase requirement as advised to the Customer from time to time.
- (b) If the Customer incurs processing fees as a result of any payments made by the Customer which are subsequently dishonoured, then the Company may charge the Customer the amount of such processing fees and the Customer must pay that amount to the Company immediately on request.
- 11. Payment**
- (a) For each delivery of Ordered Goods, the Company must provide an invoice to the Customer for the amount payable under the Agreement for those Ordered Goods together with details of:
- the applicable prices;
  - discounts or rebates (if any); and
  - Additional Fees (if any).
- (b) Notwithstanding clause 11(a), the Company may invoice the Customer for any Additional Fees calculated by the Company as owing by the Customer from time to time.
- (c) Except to the extent clause 11(d) applies, the Customer must pay the Company the full amount of each Invoice by the 25th day of the month following the month in which the Purchase Order was received by the Company.
- (d) If the Customer makes a delivery of Ordered Goods or issues an Invoice to the Customer, then to the extent that the sum of all amounts owing by the Customer to the Company at that time (whether under the Agreement or otherwise and whether or not actually payable at that time) does not exceed the Approved Credit Limit, the Customer must pay the Company the amount of that Invoice in accordance with the payment terms set out in section 1.4 of the Customer's Trade Credit Application.
- (e) Each payment under this clause 11 must be made without set-off or counterclaim and otherwise in the manner specified in the relevant Invoice.
- (f) If the Customer fails to make payment in accordance with these Trading Terms or the Agreement, after demand for payment by the Company, then the Company may do one or both of the following:
- suspend performance of its obligations under the Agreement and Agreement until all amounts owing by the Customer to the Company (whether under the Agreement, the Agreement or otherwise and whether or not actually payable at that time) are paid in full; and
  - charge interest on the amount outstanding at the rate of 11% pa accruing daily from and including the due date for payment until the date of payment in full.
- (g) To facilitate payments, the Customer agrees, upon request by the Company, to execute and deliver to the Company a direct debit request in the Company's standard form.
- 12. Force Majeure**

- (a) The obligations of the Company will be suspended during the time and to the extent that the Company is prevented from or delayed in complying with those obligations as a result of a Force Majeure Event.
- (b) If the Company is affected by a Force Majeure Event, it must:
  - (i) as soon as reasonably possible after being affected give the Customer particulars of the Force Majeure Event and the manner in which the Company's performance of its obligations will be prevented or delayed; and
  - (ii) take reasonable steps to remove, overcome or minimise the effects of the Force Majeure Event, except that the Company is not obliged to settle a strike, lockout or other labour difficulty.

### 13. Liability

- (a) Subject to this clause 13, and to the maximum extent permitted by the Australian Consumer Law and all other applicable Law, the Company is not liable to the Customer or to any third party for:
  - (i) any loss or damage of any kind caused by or resulting from any act or omission of that other party or any of its employees, agents or contractors; or
  - (ii) any loss, damage, liability, expense, injury or death sustained or incurred by the Customer or any other party resulting from the supply, performance or use of any Goods, except to the extent that the relevant loss, damage, liability, expense, injury or death was caused by a breach of these Trading Terms by, or the wilful or negligent act or omission of, the Company or any of its employees, agents or contractors.
- (b) To the greatest extent permitted by Law, neither party is liable to the other party or to any other person for any indirect, incidental, special or consequential loss irrespective of whether:
  - (i) the loss or damage is caused by or relates to breach of contract, statute, tort (including negligence) or otherwise; or
  - (ii) the parties or any other person previously were notified of the possibility of the loss or damage.
- (c) Any representation, consumer guarantee, warranty, condition or undertaking that would be implied in the Agreement or under the Agreement by legislation, common law, equity, trade, custom or usage is excluded to the maximum extent permitted by the Australian Consumer Law and all other applicable Law.
- (d) Nothing in the Agreement excludes, restricts or modifies any consumer guarantee, condition, warranty, right or remedy conferred on the Customer by the Australian Consumer Law or any other applicable Law that cannot be excluded, restricted or modified by agreement.
- (e) To the maximum extent permitted by the Australian Consumer Law and all other applicable Law, the liability of the Company for a breach of a non-excludable condition or consumer guarantee warranty referred to in clause 13 is limited, at the Company's option, to any one or more of the following:
  - (i) the replacement of the Goods or the supply of equivalent Goods;
  - (ii) the repair of the Goods;
  - (iii) the payment of the cost of replacing the goods or of acquiring equivalent Goods; or
  - (iv) the payment of the cost of having the Goods repaired.
- (f) In no event will the liability of the Company, whether under this clause 13, or otherwise, exceed the purchase price of the Goods supplied by the Company.
- (g) Nothing in clause 13(f) limits the Company's liability with respect to damages for any personal injury or death sustained or incurred by the Customer or any other party caused by the wilful or negligent act or omission of the Company or any of its employees, agents or contractors.

### 14. Indemnity

- (a) The Customer must indemnify the Company against all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis) that may be brought against the Company or which the Company may pay, sustain or incur as a direct result of any one or more of the following:
  - (i) any breach or non-performance of the Agreement by the Customer, including any breach of a warranty;
  - (ii) any wrongful, wilful or negligent act or omission of the Customer or any of its employees, agents or contractors; and
  - (iii) the Customer's storage, handling or use of any Good sold under or in connection with the Agreement,
 except to the extent that the relevant action, claim, proceeding, demand, liability, loss, damage, expense or cost was caused by the wrongful, wilful or negligent act or omission of the Company or any of its employees, agents or contractors.

### 15. Termination

- (a) Either party (**Terminating Party**) may terminate the Agreement with immediate effect by giving written notice to the other party if:
  - (i) the other party breaches any of its obligations under any agreement with the Terminating Party and does not rectify the failure (where the failure is rectifiable) within 14 days of notice; or
  - (ii) to the extent permitted by Law, the other party or, in the case of the Customer, the Guarantor, suffer an Insolvency Event.
- (b) The Company may terminate the Agreement if the Customer fails to make payment in accordance with these Trading Terms or the Agreement 3 or more times in any 6 month period.
- (c) Termination will not affect any rights or obligations which may have accrued prior to termination.

### 16. Consequences of Termination

- (a) On the termination of the Agreement, the Agreement is at an end as to its future operation except for the enforcement of any right or claim that arises on, or has arisen before, the termination.
- (b) Despite any other provision of the Agreement, on termination of the Agreement:
  - (i) subject to clause 16(b)(ii), the Company will fulfil all Purchase Orders accepted by the Company at the time of termination, other than those relating to back orders which will be automatically cancelled;

- (ii) if the Agreement is terminated pursuant to clause 15(a)(ii), all Purchase Orders will be automatically cancelled; and
- (iii) the Customer must within 5 Business Days, pay the Company all amounts owing by the Customer to the Company, whether otherwise due at that time or not, and otherwise this clause 16 and clauses 13, 14, 17, 18 and 21 survive termination of the Agreement.

### 17. Intellectual Property

- (a) The Customer acknowledges and agrees that each Intellectual Property Right is owned or entitled to be owned by the Company.
- (b) The Customer must:
  - (i) only use the Intellectual Property Rights in accordance with the reasonable written directions of the Company;
  - (ii) not license any of the Intellectual Property Rights to or allow the use of any of the Intellectual Property Rights by any other person in any circumstances;
  - (iii) immediately notify the Company of, and comply with the Company's directions in relation to, any issue, claim, demand, threat, notice of proceedings or cause of action (whether contingent, accrued or otherwise) against or involving the Customer relating to any Intellectual Property Rights; and
  - (iv) do all other acts and things that may be reasonably required by the Company to ensure the protection of the Intellectual Property Rights.

### 18. Collection and use of Information

- (a) The Customer acknowledges and agrees that he or she:
  - (i) has read and understood the Privacy Policy;
  - (ii) has read, understood and signed the Privacy Collection Statement; and
  - (iii) acknowledges and agrees with the rights and powers conferred on the Company by the Privacy Policy in respect of his or her Personal Information and commercial credit information.

### 19. CSO

- (a) Single Entry Point Sigma Company Limited (ABN 44 004 132 923) (Sigma) operates as an approved CSO subcontractor of PBS medicines under a Deed of Agreement between the Commonwealth of Australia represented by the Department of Health and Ageing and Sigma (CSO Deed). The CSO Deed requires that a single entry point is provided to Community Pharmacies to order PBS medicines, receive information and resolve queries. Under the CSO Deed the nominated single entry point is Sigma Company Limited telephone number 1300 132 293.

### 20. Modern Slavery

- (a) The parties will use reasonable endeavours to assist the other in complying with and fulfilling any statutory obligations owed under Modern Slavery Legislation, including by responding to reasonable due diligence questionnaires in relation to Modern Slavery.
- (b) The Company represents and warrants that:
  - (i) to the best of its knowledge and belief as at the date of this Agreement, it and each Sigma Group Member does not, and will not, use any form of Modern Slavery in performing its obligations under this Agreement; and
  - (ii) it will immediately notify the Customer in writing if it becomes aware of any actual, reasonably suspected or anticipated risk that Modern Slavery will be used by it or any Sigma Group Member in relation to the performance of any obligations under this Agreement; and
- (c) If the Company is in breach of any part of this clause 20, without prejudice to any other remedy which the Customer may have under this Agreement or at Law, the Customer may terminate this Agreement by:
  - (i) first providing the Company with 14 days of notice to enable the Company to rectify the breach;
  - (ii) where the Company cannot rectify the breach, the Customer may immediately terminate this Agreement, to which clauses 15(c) and 16 apply.

### 21. General

- (a) The construction, operation and performance of any contract subject to these Trading Terms will be governed by the Laws of the State of Victoria and the parties accept the jurisdiction of the Courts of that State for resolution of any dispute arising out of or relating to the Agreement, its performance or subject matter.
- (b) The Company may transfer all or any part of its rights, interests, obligations or liabilities under the Agreement by assignment or by novation, provided that the Company remains responsible for complying with its obligations as an approved CSO distributor.
- (c) The Customer must not transfer, assign or otherwise dispose of, its rights and obligations under the Agreement without the prior written consent of the Company (which must not unreasonably be withheld).
- (d) The Customer must, as soon as practicable, notify the Company in writing of any proposed sale of the Customer's business or change in control of the Customer's business.
- (e) The Agreement contains the entire understanding between the parties concerning the subject matter of the Agreement and supersedes all prior communications between the parties.
- (f) Each party acknowledges that, except as expressly stated in the Agreement and the Agreement, that party has not relied on any representation, warranty or undertaking of any kind made by or on behalf of another party in relation to the subject matter of the Agreement.
- (g) To the extent that there is any inconsistency between the Agreement and any other agreement (including the standard terms and conditions of the Customer), the Agreement will prevail.
- (h) These Trading Terms prevail to the extent of any inconsistency, over the terms of any Purchase Order or invoice or other arrangement between the parties and displace any contradictory terms or provisions.
- (i) The Special Conditions prevail to the extent of any inconsistency over these Trading Terms, the terms of any Purchase Order or invoice or other arrangement between the parties and displace any contradictory terms or provisions.

- (j) No waiver of any provision of the Agreement or any agreement will be of any force or effect unless confirmed in writing and signed by the parties.
- (k) The Company may set off any amount due for payment by the Company to the Customer against any undisputed amount due for payment by the Customer to the Company under the Agreement.
- (l) Any provisions of the Agreement that are prohibited or unenforceable under the Laws of a jurisdiction will not apply in that jurisdiction and will not affect the validity or enforceability of the other provisions of the Agreement.
- (m) Regardless of any prior agreements, upon closure of the Customer's account, the sale of the Customer's business, or a change in control of the Customer's business, all of the Customer's outstanding debts and obligations, including current and forward dated amounts, become due and payable on the earlier of:
  - (i) the date required by clause 11(d); or
  - (ii) the day before the date on which the closure of the Customer's account, the sale of the Customer's business or the change in control of the Customer's business occurs.
- (n) On written request of the Customer, (and subject to the relevant credit checks) the Sigma Group may open such other trade accounts with the Sigma Group as requested by the Customer using the information provided in the Customer's original Trade Credit Application. The Sigma Group reserves the right to request such additional information as may be required at the time in order to open any new account.
- (o) The Sigma Group reserves the right to vary any of these Trading Terms at any time and will provide the Customer with reasonable prior notice of any variations where practicable. The Customer will be deemed to have accepted the Terms (as varied from time to time) by continuing to place orders with the Sigma Group. Sigma will not be bound by any variations to these Trading Terms unless accepted in writing by an authorised officer of Sigma.

**22. Terms and Conditions of this Application**

**Additional Information**

- (a) I/We agree to promptly provide Sigma Group with such documents and information as Sigma Group may reasonably request (in the format reasonably required by Sigma) at any time for the purpose of assisting Sigma Group in assessing:
  - (i) this application for trade credit (Trade Credit Application); or
  - (ii) any ongoing review of the Customer's trade credit account.
 This information may include the latest financial statements of the applicant which cannot be more than 12 months old.

**23. Contents of Trade Credit Application**

- (a) I/We represent and warrant that as at the date this Trade Credit Application is submitted to Sigma Group and as at each day that credit is provided to me/us by Sigma Group, the contents of this Trade Credit Application together with any financial statements submitted to Sigma Group at any time are complete, true and correct in every particular and are not misleading or deceptive in any way.
- (b) I/We undertake to immediately notify Sigma Group in writing as soon as I/we become aware of any matter or thing which renders or may render any item described in clause 23(a) incomplete, untrue, incorrect, misleading or deceptive.
- (c) Sigma Group may in its absolute discretion accept or reject this Trade Credit Application and to the maximum extent permitted by law, is under no obligation to provide reasons for any such rejection.
- (d) I/We acknowledge that I/we must not use any Goods or credit provided by Sigma Group wholly or predominantly for personal, domestic or household use.