

## Application of these terms

These Sigma Purchase Order Terms – Stock (“**Conditions**”), as amended from time to time, apply to all products supplied by any company, person or other party (“**Supplier**”) to Sigma Healthcare (“**Sigma**”) for distribution and resale. These Conditions, any Standing Contract, the Trading Details Document(s) Product Description and any Purchase Order for the order of Products constitute the terms of the agreement between the Supplier and Sigma (“**Contract**”). Sigma is not bound by the Supplier’s terms of sale or any other conditions outside of the Contract that the Supplier seeks to apply to the supply of the products by the Supplier to Sigma.

## 1. Ordering Products

1.1 Sigma requires the supply of the Products and the Supplier has represented that it can supply the Products.

1.2 Sigma may order Products from time to time, under:

- (a) an ongoing signed wholesale supplier agreement made between the Supplier and Sigma which entitles Sigma to place orders from time to time for an agreed range or catalogue of Products with the Supplier over an agreed term (**Standing Contract**); and / or
- (b) a one-off purchase order issued by Sigma specifying the Products to be provided and which is marked and shown to be expressly a ‘Purchase Order’ from Sigma (**Order**).

1.3 If a Standing Contract is in place between Sigma and the Supplier, Sigma will place orders for the Products with Supplier from time to time in the format that is agreed between Sigma and the Supplier under the relevant Standing Contract.

1.4 The Supplier only accepts and is deemed to accept an Order on the earlier of:

- (a) Signing and returning an Order to Sigma;
- (b) Communicating to Sigma it accepts the Order in writing; or
- (c) Commencing to dispatch the Products ordered; or
- (d) Delivering any of the Products ordered.

1.5 Once the Supplier accepts the Order, an individual purchase order comes into existence comprising:

- (a) the Standing Contract, if any, made between the parties;
- (b) the Trading Details Document(s);
- (c) the Order;
- (d) these Conditions; and
- (e) any other documents exchanged between the parties or referenced in this agreement as forming part of the Contract.

In the event of any inconsistency between any of the documents that form part of the Contract, the documents will take precedence in the order listed at 1.5(a) to (d) above with the first taking priority and so on.

1.6 Unless otherwise set out in an Order or a Standing Contract, Sigma is not bound to any minimum order or purchase requirement in relation to the Products.

## 2. Delivery

2.1 The Supplier must deliver the Products in full to the Site by the applicable Delivery Date. On-time delivery of the Products in full is of material importance to Sigma. The Supplier undertakes not to interrupt, delay, abandon or withhold delivery of Products for any reason other than where a Force Majeure Event occurs, including but not

limited to a dispute between the parties. Any breach of this clause may cause Sigma to breach or otherwise suffer loss, damages and expenses under other arrangements it has with third parties for the supply of Products.

2.2 The Supplier shall keep Sigma fully informed as to delivery of the Products including any event which may result in Late Delivery. If Late Delivery occurs or is likely to occur for any reason, Sigma may (without limiting any other right Sigma may have), take any one or more of the following actions:

- (a) allow the Supplier to supply the affected Products as a ‘backorder’ under a later delivery date; or
- (b) if Sigma has notified the Supplier of the Late Delivery and the Supplier has confirmed that the delivery is not dispatched, cancel the Order for the relevant Products either in whole or in part in which case the Supplier must promptly refund to Sigma any amount paid in respect of the Products which are the subject of the cancellation.

2.3 The Supplier agrees to contact the Supply Chain Contact on a weekly or other agreed regular basis and provide updated lead times for all Orders issued where Sigma has accepted a backorder delivery date. Prior to delivery of backorders, the Supplier agrees to contact the Supply Chain Contact and confirm that the Products are still required.

2.4 The Supplier must comply with all applicable Commonwealth, State and local shipping, road and rail transport laws and regulations in delivering the Products (and is responsible for obtaining all necessary approvals, consents and permits for delivery of the Products and resale of the Products by Sigma and supplying copies of such approvals, consents and permits to Sigma upon request).

2.5 All deliveries are to be clearly labelled with the full address of the receiving location as shown on the relevant Purchase Order. A delivery docket must accompany every delivery of Products to Sigma and must meet the requirements notified to the Supplier from time to time.

## 3. Risk and title

3.1 The Supplier warrants that it is the owner of the Products and is authorised to sell the Products to Sigma free from any liens, charges and encumbrances. The Supplier bears all risk of loss and damage to the Products until the Products have been delivered into the control or possession of Sigma at the Site and have not been rejected by Sigma under clause 4.3.

3.2 Title to the Products passes to Sigma on payment by Sigma for it (or relevant part of it). Where Sigma does not make payment in respect of specific Product(s), payment must be treated as having been made first in respect of Products which have passed out of the possession of Sigma, and then in respect of whatever Product(s) still in the possession of Sigma.

## 4. Quality of the Products

4.1 The Products must:

- (a) be free from any defects in design, materials or workmanship including broken or damaged seals and/or packaging, and signs of actual, suspected or potential tampering or contamination;
- (b) be fit for the purpose for which they are intended;
- (c) match the description (including any technical or performance specifications) set out in the Order or otherwise represented by the Supplier;
- (d) comply with any product standards or industry standards that are relevant to the manufacturing,

- operation and use of the Products, and any standards otherwise represented by the Supplier;
- (e) meet all safety and performance requirements described in the Order or otherwise represented by the Supplier;
- (f) have no less than 9 months remaining shelf-life, unless the delivery of that Product as short-dated stock has been approved in advance by Sigma in writing; and
- (g) be supplied with adequate and detailed Documentation, packaged, labelled and delivered to meet Sigma's requirements notified by Sigma to the Supplier from time to time.
- 4.2 The Supplier is responsible for procuring all necessary licences to any intellectual property rights included as part of the Products to the extent required for Sigma to distribute, market, promote and on-sell the Products as described in the Contract.
- 4.3 If the Products fail to comply with the conditions set out in clause 4, Sigma will notify the Supplier of such failure or non-compliance and may, at Sigma's election:
- (a) cancel the Order for those Products (in whole or in part) without penalty and require the Supplier to promptly collect any Products already delivered to Site and, if applicable, repay to Sigma all moneys paid to the Supplier for Products (whether delivered or not);
- (b) require the Supplier to repair, modify or replace the Products within a reasonable period as may be agreed between the parties); and/or
- (c) exercises any right to retain, withhold, reduce or set-off any amount due to the Supplier.
- (d) If the Supplier delivers Sigma a quantity of Products exceeding the quantity of Products specified in the Order, the excess Products must be promptly collected at the Supplier's own risk and expense.
- 5. Warranties**
- 5.1 The Supplier warrants that:
- (a) all Products will be of acceptable quality, be fit for the purpose for which they are intended to be used and comply with all descriptions and specifications provided in the Contract.
- (b) all Products which are classified by Standards Australia will be accredited to the relevant standard and carry the current Standards Australia mark or watermark license number. Similarly, all Products which are regulated under the Therapeutic Goods Act 1989 (Cth), the Australia New Zealand Food Standards Code or the Poisons Standard shall comply with applicable regulations;
- (c) any Documentation will be complete, up-to-date and accurate and suitable for Sigma (or its customers) to distribute, market and/or promote the Products;
- (d) Sigma's distribution, promotion, marketing and/or sale of the Products will not infringe the intellectual property rights of any person;
- (e) as at the date of the Order, there are no actions, claims or legal proceedings, actual or threatened, that would or may materially hinder or prevent the Supplier from making good its warranties or otherwise performing its obligations under the Contract;
- (f) the Supplier will always during the supply of the Products hold and comply with the terms of all applicable licences, authorisations, registration, approvals and consents which it is required to hold and comply with for the lawful supply of the Products in Australia and all other territories that Sigma is authorised by the Supplier to market, promote and/or distribute the Products as applicable;
- (g) it will immediately notify Sigma if it becomes aware of any fact, circumstance or thing that is inconsistent with any of its warranties in this clause 5.
- 5.2 The Supplier further warrants that the Products will be new, of merchantable quality and free from defects in design, material and workmanship for any warranty period specified in the Order or otherwise represented in the Supplier's technical information about the Products (Warranty Period). If a defect arises with any Products during the Warranty Period, the Supplier will comply with reasonable instructions issued by Sigma which may include, at its own expense, repairing or replacing the defective Products within the time stated by Sigma, or if no time is stated, within a reasonable time. The Supplier will be liable for the costs incurred by Sigma in respect of defective Products. Each of the warranties is separate and independent and is not limited or restricted by any other warranty or provision of the Contract.
- 6. Price and payment terms**
- 6.1 The price of the Products will be:
- (a) the price set out in the Contract or Order;
- (b) adjusted by any matters agreed in the Trading Details Document(s) or otherwise set out in clause 7; and
- (c) further adjusted by any separate or subsequent agreement between Sigma and concerning pricing that is specified in writing.
- 6.2 Sigma will pay the Price to the Supplier.
- 6.3 The Supplier may not increase the Price of the Products once a Purchase Order has been issued, unless both parties have agreed in writing. The Supplier will provide written notification of proposed general list price changes to Sigma's Supply Chain Contact by giving Sigma no less than six (6) weeks notice in writing.
- 6.4 Unless otherwise agreed in writing by Sigma, all the Supplier's costs associated with packaging, transport and delivery of the Products to the Site are included in the Price.
- 6.5 The Supplier must claim payment for the Products in accordance with the payment arrangements set out in the Purchase Order but if none are set out then the following will apply by default:
- (a) the Supplier will be entitled to claim payment for Products delivered to Sigma's nominated Site as evidenced by receipt on delivery;
- (b) on becoming entitled to claim payment for delivered Product, the Supplier must issue a Compliant Invoice to Sigma in accordance with the requirements notified to the Supplier by Sigma from time to time.
- 6.6 If Sigma requests, the Supplier must promptly provide Sigma with all relevant records to calculate and verify the amount set out in any claim for payment / Invoice.
- 6.7 Sigma must pay all Compliant Invoices by the date set out in the Order or if no date is set out within 90 days following the end of the month in which the relevant invoice is received from the Supplier except where Sigma:
- (a) is required by Law to pay within a shorter time frame, in which case Sigma must pay within that time frame;

- (b) exercises any right to retain, withhold, reduce or set-off any amount due to the Supplier in accordance with this Contract;
  - (c) disputes the Supplier's claim for payment or Invoice, in which case: (1) to the extent permitted by Law, Sigma may withhold payment of the disputed part of the Supplier's claim for payment or Invoice pending resolution of the dispute; and (2) if the resolution of the dispute determines that Sigma must pay an amount to the Supplier, Sigma must pay that amount promptly upon resolution of that dispute; or
  - (d) is otherwise required by Law to withhold a portion of payment.
- 6.8 Payment of an amount on an invoice or failure to dispute an invoice prior to the time it is paid, does not prevent Sigma subsequently disputing its liability to pay that amount (provided it does not do so unreasonably and otherwise acts at all times in good faith), nor is it evidence that the Products or related Deliverable has been accepted or that it complies with the Contract.
- 6.9 Sigma may reduce any payment due to the Supplier under the Contract by any undisputed amount which the Supplier must pay Sigma under the Contract, including costs, charges, damages and expenses and any debts owed by the Supplier to Sigma. This does not limit Sigma's right to recover those amounts in other ways.
- 7. Trading Details (rebates, discounts and other Supplier payments)**
- 7.1 This clause 7 shall apply to the extent that any Trading Details Document specifies that the Supplier must pay Sigma a rebate of, or apply a discount to the Price or otherwise contribute toward Sigma's marketing, promotion or distribution of the Products.
- 7.2 The Supplier acknowledges and agrees that it will:
- (a) pay rebates, processing fees, marketing incentives and any other incentives or Service Credits;
  - (b) apply discounts and make allowances, as set out in the Trading Details Document(s), or as agreed in writing between Sigma and the Supplier.
- 7.3 The method of payment for the rebate, recovery or discounts or other Supplier contributions is as specified in the Trading Details Document.
- 7.4 At regular intervals agreed between the Supplier and Sigma set out in the Trading Details Document or otherwise on request of Sigma, the Supplier shall provide Sigma with a statement of account showing a reconciliation of orders with payment received.
- 8. Stock control matters**
- Slow moving stock*
- 8.1 The Supplier and Sigma shall work collaboratively to monitor slow moving stock. Unless the Trading Details Document(s) specifies otherwise, the Supplier agrees to:
- (a) exchange any slow moving, excess, expiring or discontinued stock of the Products with other saleable Product of equal value as required by Sigma;
  - (b) exchange Product stock for which no sales have been recorded within the prior twelve (12) months or such shorter period as may be stipulated in the Trading Details Document and exchange it for current saleable stock of an equal value or other stock of equal value as nominated by Sigma; and / or
- (c) accept the return of any unsold promotional stock ordered by Sigma which remains unsold after ninety (90) days from the end of the promotion period and credit Sigma's account for any promotional stock returned in accordance with Sigma's reasonable instructions.
- Sigma will use reasonable endeavours to redistribute stock within its own retail brand network prior to requesting the exchange of non-selling products.
- Discontinued stock or Product modifications*
- Where the Supplier intends to remove a product from its range or modify it in any way for whatever reason, the Supplier undertakes to provide Sigma Supply Chain Contact or relevant Category Manager as applicable with written notice at least one hundred and twenty (120) days prior to the effective date of the removal or modification of such product.
- Any stock of Products modified or removed from the Supplier's range which remains unsold at the end of the one hundred and twenty (120) days' notice period will be exchanged by the Supplier for current saleable stock of an equal value or other stock of equal value, or for a full credit or refund, at Sigma's option.
- The Supplier further agrees that if less than one hundred and twenty (120) days' notice of product removal or modification is given, the Supplier will accept the return of all such stock which remains unsold for full credit or refund without adjustment upon Sigma returning the goods. The cost of returning such stock shall be borne by the Supplier.
- Collaboration, ranging and performance review**
- Collaboration*
- Where nominated in the Trading Details Document(s), the parties shall:
- (a) share with each other forecast and product demand planning information at the time(s) and in the formats as specified. The purpose of the sharing of forecasts and Product demand information shall be to enable both parties to plan and optimise supply chain operations and promotional and marketing activities to support sales of the Products; and / or
  - (b) participate in joint business planning activities as nominated in the Trading Details Document(s).
- Ranging*
- If either party proposes to make a Ranging Decision in respect of the Product categories supplied under this Contract, that party must, as soon as possible (and at least 8 weeks in advance of making the Ranging Decision), notify the other party and where practicable, invite the other party to participate in the Ranging Decision. The objective of both parties' participation in any Ranging Decision shall be:
- (a) to obtain an aligned understanding of the rationale for the Ranging Decision proposed to be made; and
  - (b) establish key dates for the Ranging Decision to enable both parties to review the impact and adequately plan to minimise any adverse impact on their business operations;
- Where the Ranging Decision is a proposal by the Supplier to include a new product within the Product range supplied under this Contract or to replace an existing Product with a new Product under this Contract, the Supplier and Sigma shall work collaboratively to agree any specific commercial terms such as sales targets, rebates, discounts, stock-listing fees, review dates, promotion funding and similar

which shall apply to support implementation of the Ranging Decision.

#### Marketing and promotion

9.4 The Supplier acknowledges and agrees that Sigma, subject to the Pharmaceutical Benefits Scheme or other similar regulatory pricing requirements, may freely set a resale price for the Products.

9.5 The Supplier shall work collaboratively with Sigma and provide to Sigma suitable promotion and marketing collateral, artwork, brochures, information sheets, store display and similar materials and items which are usually supplied by the Supplier in respect of the Product to wholesalers similar to Sigma operating in similar industries.

#### Continuous improvement / performance review

9.6 The parties will meet regularly to review the Supplier's performance of its obligations under the Contract including where applicable any Key Performance Indicators / Service Levels set out in Trading Details Document(s).

#### 10. Product withdrawals and recalls

10.1 If either party becomes aware of any defect, fault or other condition, actual, potential or threatened, in any Products supplied to Sigma, of a nature or extent that Sigma ought not to offer those Products for sale to third parties, then that party must immediately give notice to the other party of:

- (a) the Products affected by reference to invoice numbers, product descriptions, batch codes, best before/use by date codes, Australian Product Numbers, item code numbers, quantities supplied, date of physical possession and where Products have been distributed and any other unique identifier;
- (b) the nature of the threat; and
- (c) the action the party has taken or proposes to take in relation to the threat.

10.2 The parties must each co-operate fully to diminish any risk to the public from the threat which may include, but is not limited to:

- (a) withdrawing the Products from offer for sale to the public, and where necessary, recalling any Products already sold;
- (b) complying with all legal requirements in relation to product recalls; and
- (c) taking corrective action where appropriate, which may include disseminating relevant information to the public and government authorities.

#### 11. Inspection and information

11.1 The Supplier must keep Sigma fully informed on all aspects of the delivery of the Products, including by promptly responding to requests for information made by Sigma from time to time.

11.2 The Supplier must provide to Sigma on request progress reports setting out, in such detail as is reasonably requested, the different stages of design, manufacture or delivery of the Products.

11.3 Sigma may, acting reasonably, direct the Supplier that the whole or any part of the Products be tested, examined, inspected or reviewed prior to Delivery or promptly following Delivery. The Supplier and Sigma shall co-operate with each other to arrange a time and place for such inspection and to ensure such parts or samples of the Products are accessible by Sigma (or its representatives) as may be reasonably required. On completion of the tests, inspection, examination and/or review, the results shall be promptly made available to both parties and to the extent of any non-conformity clause 4.3 shall apply.

#### 12. Confidential information

12.1 Each party must keep the Confidential Information of the other party secret and confidential and may only use Confidential Information for the purposes of the Contract or as otherwise consented by the other party. Each party agrees to notify the other of any suspected or actual unauthorised use, copying or disclosure of Confidential Information.

12.2 A party may disclose the Confidential Information of the other party:

- (a) to its Personnel who have a need to know for the purposes of the Contract (and only to the extent that each has a need to know) and before disclosure, have been directed to keep confidential all Confidential Information; or
- (b) where it is required by law to do so, provided:
  - (i) the other party has first been given a reasonable opportunity to take any steps it considers necessary to protect the confidentiality of that information; and
  - (ii) the recipient has been notified that the information is confidential information.

#### 13. Variations

13.1 Sigma may, add, delete, omit or change the nature, quality, method for delivery, time for delivery or quantity of the Products under the Contract (a **Variation**) by agreement in writing with the Supplier.

13.2 Prior to directing a Variation Sigma may request, and the Supplier must promptly notify Sigma, whether a proposed Variation can be implemented, together with, if it can be implemented, the Supplier's estimate of the: (a) effect on the Delivery Date; and (b) Price.

13.3 The Supplier may request Sigma to direct a Variation for the convenience of the Supplier and Sigma may do acting reasonably. Unless a direction under this clause 13.3 provides specifically for additional payment, the Supplier shall not be entitled to either extra time or extra money in relation to such a direction.

13.4 The parties must agree price for each Variation using the following order of precedence:

- (a) prior agreement;
- (b) applicable rates or Prices in the Contract;
- (c) rates or Prices in a priced schedule of rates to the extent that it is reasonable to use them; and
- (d) reasonable rates or prices, which shall include a reasonable amount for profit and overheads, and any deductions shall deduct a reasonable amount for profit and overheads.

13.5 If the Supplier considers a direction from Sigma to constitute a variation but which does not comply with this clause, it must notify Sigma within 7 days of that direction.

#### 14. Modern Slavery

14.1 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.

14.2 The Company represents and warrants that:

- (a) to the best of its knowledge and belief as at the date of this Contract, it and each Sigma Group Member does not, and will not, use any form of Modern Slavery in performing its obligations under this Contract; and

- (b) 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 Contract; and
- (c) If the Supplier is in breach of any part of this clause 14.14, without prejudice to any other remedy which Sigma may have under this Contract or at law, Sigma may terminate this Agreement by:
- (i) first providing the Supplier with 14 days of notice to enable the Supplier to rectify the breach; or
- (ii) where the Supplier cannot rectify the breach, Sigma may immediately terminate this Contract.
- 15. Termination**
- 15.1 Either party may terminate the Contract immediately by giving notice in writing if:
- (a) the other party breaches any of its material obligations under the Contract and such breach is incapable of remedy
- (b) the other party breaches a material obligation under the Contract and such breach has not been remedied within 20 Business Days after the non-complying party has been requested to remedy it in writing; or
- (c) the other party suffers an Insolvency Event.
- 15.2 If a notice of termination is issued the Supplier must:
- (a) stop work to the extent required by the notice; and
- (b) take such action as reasonably necessary or as reasonably directed, for the transfer, protection and preservation of Sigma's property (including the Products if those Products have become the property of Sigma).
- 16. Force Majeure Event**
- 16.1 If a Force Majeure Event prevents a party (Affected party) from performing its obligations under the Contract:
- (a) the Affected party must promptly notify the other party of the obligations which will be affected by the Force Majeure Event;
- (b) those obligations of the Affected party will be suspended for the time the Force Majeure Event continues;
- (c) the Affected party must use its best endeavours to mitigate the effect of the Force Majeure Event; and
- (d) neither party will be liable to the other party for any liabilities, losses, damages, costs or expenses the other party suffers or incurs because of that Force Majeure Event.
- 16.2 If the Supplier is prevented from performing its obligations for more than 30 Business Days because of a Force Majeure Event, Sigma may terminate the Contract with immediate effect by giving written notice to the Supplier.
- 17. Insurance**
- 17.1 In addition to any insurance the Supplier is obliged to effect under all applicable laws, the Supplier will have in place (and if the Supplier is not the manufacturer, will ensure that the manufacturer of the Products has in place) a current annual General and Products Liability Policy of insurance (including coverage for all warranties in respect of the Products under this Contract) fully indemnifying the Supplier against liability for property damage, personal injury or death arising from Products manufactured, distributed or sold by the Supplier with an annual cover of not less than \$10 million in the aggregate or such other higher amount as may be specified in the Trading Details Document(s).
- 17.2 Upon request, the Supplier must provide to Sigma within 5 Business Days a certificate of currency and statement of insurance, including the date of the policy, for any of the policies referred to in this clause 17 which are held by the Supplier.
- 18. Liability and indemnities**
- Indemnities*
- 18.1 Subject to the limitations on liability set out below, the Supplier agrees always to indemnify Sigma against all liabilities, Loss, damages, costs and expenses that Sigma may sustain or incur, directly, due to:
- (a) any breach of warranties by the Supplier;
- (b) any personal injury, illness or death to any person or damage to any real or tangible property caused or contributed to by a breach of this Agreement or the act or omission by or on behalf of the Supplier or by its Personnel;
- (c) any actual or alleged defects or faults in the Products, including any Defective Products, the reasonable costs of collection (such as collection from customers), return, recall or withdrawal, disposal and/or destruction, and any associated reasonable management costs, of such Products;
- (d) or
- (e) any Claim that the Products infringes, violates, or misappropriates a patent, copyright, trademark, trade secret or other intellectual property right of any third party;
- (f) the supply, importation, promotion, sale or resale of the Products by Sigma or the Supplier, or use of the Products by Sigma or any third party,
- except to the extent that the Loss or Claim is directly attributable to Sigma's negligence or wrongful act or omission.
- 18.2 The indemnity described in clause 17.1 is a continuing obligation separate and independent from the indemnifying party's other obligations and survives termination of the Contract.
- Limitations on liability*
- 18.3 Neither party shall be liable to the other party for any consequential, indirect or incidental loss, loss of profits, lost production, loss of anticipated savings and loss of opportunity suffered by the other party arising from or about the performance or non-performance of its obligations under the Contract.
- 19. Compliance with laws**
- 19.1 The Supplier must comply with all relevant work health and safety, environmental and workers' compensation legislation including all acts, regulations, codes of practice and Australian Standards.
- 19.2 Without limiting the Supplier's obligations under relevant legislation relating to the supply of the Products, in all dealings related to the Purchase Order, the parties agree to:
- (a) communicate openly with each other and co-operate in achieving the procurement's objectives;
- (b) act honestly and ethically;
- (c) comply with reasonable commercial standards of fair conduct; and
- (d) consult, co-operate and co-ordinate activities to identify and address any overlapping regulatory

- responsibilities aimed at ensuring the health of workers, workplaces and end-consumers.
- 19.3 The Supplier must, upon request by Sigma, provide documented evidence of the Supplier's and its authorised manufacturer's, suppliers or other service providers' compliance with any of the matters in this clause.
- 20. Disputes**
- 20.1 If any dispute, question or difference of opinion between Sigma and the Supplier arises out of or under the Contract (**Dispute**), a Party may give to the other Party a notice (**Dispute Notice**) specifying the Dispute and requiring its resolution under this clause 20.
- 20.2 If the Dispute is not resolved within 7 days after a Dispute Notice is given to the other Party, each Party must nominate one representative from its senior management to resolve the Dispute (each, a Dispute Representative).
- 20.3 If the Dispute is not resolved within 30 days of the Dispute being referred to the respective Dispute Representatives, then either Party may commence legal proceedings in an appropriate court to resolve the matter.
- 20.4 During the existence of any Dispute, the Parties must continue to perform all their obligations under the Contract without prejudice to their position in respect of such Dispute, unless the Parties otherwise agree.
- 20.5 Nothing in this Clause 20 prevents a party from seeking any urgent interlocutory relief.
- 21. Goods and services tax**
- 21.1 Unless specifically described in the Order as 'GST inclusive', the Price does not include any amount for GST.
- 21.2 Where any supply to be made by the Supplier under the Contract is subject to GST:
- (a) the consideration payable for that supply but for the application of this clause 21 (GST Exclusive Consideration) shall be increased by, and Sigma shall pay to the Supplier, an amount equal to the GST payable by the Supplier in respect of that supply (GST Amount); and
  - (b) Sigma must pay the GST Amount to the Supplier at the same time and in the same manner as the GST Exclusive Consideration is payable or to be provided for that supply.
- 21.3 Notwithstanding any other provision of the Contract, Sigma need not make any payment for a taxable supply made by the Supplier under or in accordance with the Contract until the Supplier has given Sigma a tax invoice in respect of that taxable supply.
- 21.4 Unless the contrary intention appears, a word or expression used in this clause 19 which is defined in the GST Law has the same meaning in this clause 21.
- 22. General**
- 22.1 The Supplier may not assign or subcontract the rights and/or obligations under the Contract without Sigma's prior written consent (such consent not to be unreasonably withheld or delayed).
- 22.2 24.6 Sigma may assign any of its rights under this Agreement or otherwise transfer the benefit of this Agreement to any member of the Sigma Group.
- 22.3 Each party must do or cause to be done all things necessary or desirable to give effect to, and must refrain from doing anything that would hinder performance of the Contract.
- 22.4 The relationship between the parties is as independent contractors, and does not involve any relationship of agency, fiduciary, employment, partnership, joint venture or association.
- 22.5 A term or part of a term of the Contract that is illegal or unenforceable may be severed from the Contract and the remaining terms or parts of the terms of the Contract continue in force.
- 22.6 A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.
- 22.7 The Contract is governed by the law applicable in Victoria, Australia, and each party submits to the jurisdiction of the courts of Victoria.
- 22.8 The Contract constitutes the entire Contract between the parties as to its subject matter and supersedes all other representations and Contracts about the subject matter of the Contract.
- 22.9 An Order may be executed in any number of counterparts and all counterparts when exchanged will be taken to constitute one document.
- 23. Interpretation**
- 23.1 In these purchase terms unless the contrary intention appears:
- Affiliate** has the meaning giving in the Corporations Act 2001 (Cth).
- Business Day** means a day that is not a Saturday, Sunday or public holiday in Melbourne, Victoria.
- Claim** means any claim made (by allegation, demand, suit, action or other proceeding of any nature), whether arising under contract, tort, equity, negligence or otherwise.
- Compliant Invoice** means an invoice issued by the Supplier to Sigma for delivered Products under the Contract which meets all the requirements of a valid tax invoice for GST Law purposes and Sigma's requirements notified to the Supplier from time to time.
- Confidential Information** means all information disclosed to or otherwise acquired by a receiving party which is marked as confidential, treated by the disclosing party as confidential or otherwise by its nature confidential, including any information or records (or copies of information or records) relating to the Contract, business or that party, business associates, financial affairs, products, services, suppliers or clients of Sigma, but excluding information that: (a) the receiving party creates (whether alone or jointly with any third person) independently of the disclosing party; or (b) is public knowledge (otherwise than as a result of a breach of confidentiality by the recipient or its personnel).
- Control** means to:
- (a) have the capacity to directly or indirectly determine or materially influence the outcome of decisions relating to the financial or operational management and/or policies of an entity; or
  - (b) own, directly or indirectly, fifty percent (50%) or more of the outstanding voting securities or other ownership interest of such entity,
- and **Controls** and **Controlled** has a corresponding meaning.
- Deliverables** means any document, software, work product or other deliverable provided or required to be provided as part of the delivery of the Products under the Contract.

**Delivery Date** means the date or dates that the Supplier must deliver the Products as specified in the Order or otherwise notified by Sigma..

**Documentation** means all drawings, specifications, user manuals, notes, guides and other information in relation to the delivery, sale, promotion and/or marketing of the Products.

**Force Majeure Event** means anything outside the reasonable control of a party, but a strike by employees of the party or employees of a subcontractor of the party (or both) is not a Force Majeure Event unless the strike is part of an industry wide campaign that does not arise out of the dispute between that party or that subcontractor and one or more of its employees.

**GST Law** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)

**Insolvency Event** means any insolvency-related event that is suffered by a party, including without limitation where: (a) the party ceases to carry on business; (b) the party ceases to be able to pay its debts as they become due; (c) the party disposes of the whole or any substantial part of its assets, operations or business (other than in the case of a solvent reconstruction or reorganisation); (d) any step is taken by a mortgagee to take possession or dispose of the whole or part of the party's assets, operations or business; (e) any step is taken to enter into any arrangement between the party and its creditors (other than in the case of a solvent reconstruction or reorganisation); or (f) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a provisional liquidator, a liquidator, an administrator, or other like person of the whole or part of the party's assets, operation or business.

**Late Delivery** means a failure to deliver the Products by the Delivery Date, other than because of a Force Majeure Event.

**Loss** means any loss, liability, damage, cost, charge, outgoing or expense in relation to a Claim, including: (a) any amount payable on or during dealing with a Claim (whether Claim is proved or successful, in whole or in part or not); and (b) legal costs and disbursements on a full indemnity basis.

**Modern Slavery** has the same meaning given in the Modern Slavery Legislation.

**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).

**Order** means an order for the Products issued by Sigma to the Supplier which may be in the form of a Sigma Purchase Order or in the case of a Standing Contract another format as agreed between the parties under the Standing Contract.

**Personnel** means employees, officers, consultants and other agents of a party as the context requires.

**Price** has the meaning set out in clause 6.1.

**Products** means the goods to be supplied by the Supplier as described in the Order (if any).

**Ranging Decision** means a decision by either party to maintain lines, list new lines and/or delist Products.

**Service Credits** means amounts set out in the Trading Details Document(s) which have been agreed between the parties as amounts to be deducted from the Price payable by Sigma under the Contract or otherwise payable by the Supplier to Sigma (as a rebate or a credit) because the Supplier's performance has failed to meet performance standards agreed in the Trading Details Document.

**Sigma Group Member** means Sigma, Sigma Healthcare Limited (ACN 004 132 923) and any company, trust or other entity that is Controlled by, or is under common Control of Sigma Healthcare Limited and includes any Related Body Corporate or Associated Entity of the Sigma Healthcare Limited. All such entities together comprising the Sigma Group.

**Sigma's Supply Chain Contact** means the Sigma employee nominated in the Trading Details Document or otherwise notified by Sigma to the Supplier in writing from time to time.

**Site** means the location(s) specified in the Order, where the Products are to be delivered.

**Supplier Handbook** means the document by that name as provided by Sigma to the Supplier or otherwise published on Sigma's website and includes Sigma's Supplier Compliance Standards document which forms part of the Supplier Handbook and is also to be published on Sigma's website or otherwise provided to the Supplier.

**Trading Details Document(s)** means trading details in connection with the Products and Sigma's resale across its distribution network including banner pharmacies which may set out agreed rebates, credits, pricing discounts, wholesale fees and retail network marketing co-operation and contributions and similar matters negotiated specifically between Sigma and the Supplier concerning the supply, resale and marketing of the Products.

- 23.2 In these purchase terms, unless the contrary intention appears:
- (a) the singular includes the plural and vice versa, and a gender includes other genders;
  - (b) another grammatical form of a defined word or expression has a corresponding meaning;
  - (c) a reference to A\$, \$A, dollar or \$ is to Australian currency;
  - (d) a reference to time is to Victoria, Australia time;
  - (e) a reference to a party includes the party's executors, administrators, successors and permitted assigns and substitutes;
  - (f) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
  - (g) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
  - (h) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of the Contract or any part of it;
  - (i) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
  - (j) headings are for ease of reference only and do not affect interpretation.