

# TERMS OF TRADING AGREEMENT

(HEALYGROUP)

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1. The customer hereby warrants that the information comprised in the First Schedule hereto is accurate and correct and is supplied for the purpose of obtaining credit.
2. The Customer warrants that the persons' appearing on this Agreement are duly authorised by the Customer to apply for credit and execute this Agreement.
3. The Customer agrees to adhere to the terms and conditions of this Agreement.
4. **Jurisdiction**  
Notwithstanding any implication of law to the contrary, all contracts between the Customer and the Supplier shall be deemed to be made and constructed and to be enforceable in and according to the laws of the State of New South Wales and by mutual consent to be subject to the jurisdiction of the Courts of that State.
5. **Claims**  
Any claim for non-delivery, shortage in supply or damage occurring during the course of delivery or any claim for rejects by a customer must be in writing and given to the Manager of the Supplier within 24 hours of delivery.
6. In the event of the Supplier granting credit facilities to the customer then the following terms apply:
  - (i) All accounts are to be settled in full within 30 days from end of month in which goods/services are purchased.
  - (ii) That should the Customer default in the payment of any monies due under this Agreement then all monies due to the Supplier shall immediately become due and payable and shall be paid by the Customer within seven (7) days of the date of demand and the Supplier shall be entitled to charge interest on all amounts not paid by the due date for payment and the Customer undertakes to pay any interest so charged. Such interest shall be calculated on a daily basis from the due date for payment until the date the Supplier received payment at such rate, up to but not exceeding 2% per month.
  - (iii) Any expenses, costs or disbursements incurred by the Supplier in recovering any outstanding monies including debt collection agency fees and solicitor's costs shall be paid by the Customer providing that those fees do not exceed the scale charges as charged by that debt collection agency/solicitor.
  - (iv) The Supplier shall be entitled without notice to terminate any credit arrangement with the Customer in the event of the Customer defaulting in any of the terms and conditions herein contained.
  - (v) The Supplier shall be entitled at any stage during the continuance of this Agreement to request such security or additional Security as the Supplier shall in its discretion think fit and shall be entitled to withhold supply of any goods or credit arrangements until such Security or additional security shall be obtained or for any reason at the Suppliers' discretion.
7. The Customer hereby acknowledges that all goods supplied by the Supplier shall remain the property of the Supplier until the Supplier receives payment in full for all goods supplied by the Supplier to the Customer regardless of whether any invoice relating to any particular goods has been paid in full or not. The Customer hereby grants to the Supplier a security interest, as defined in the Personal Property Securities Act 2009, over all goods supplied by the Supplier to the Customer as security for all amounts owing by the Customer to the Supplier for goods supplied by the Supplier to the Customer. The Supplier hereby agrees to allow the Customer to deal, sell or trade with the goods in the normal course of business and for the Customer to retain the sale proceeds of such sale or dealing providing that the Customer adheres to the terms and conditions of this Agreement. In the event of the Customer defaulting in any of the terms of this Agreement including the payment of any monies due under this Agreement, then the Supplier shall have the right (without giving notice) to retake possession of the goods supplied to the Customer by the Supplier and the Customer hereby authorises and allows the Supplier or its representative, servant, agent or employee to enter the premises upon which the goods are housed or stored for the purpose of retaking possession of the same and the Supplier shall not be liable for any costs, losses, damages, or any other monies or losses suffered by the Customer as a result of the Supplier retaking possession of the goods.
8. These Conditions of Sale shall not exclude, limit, restrict or modify the rights, entitlements and remedies conferred upon the Customer or the liabilities imposed upon the Supplier by any condition or warranty implied by a Commonwealth, State or Territory Act or Ordinance, rendering void or prohibiting such exclusion, limitation, restriction, or modification.
9. If any of these terms or conditions is or becomes for any reason wholly or partly invalid that term or condition shall to the extent of the invalidity be severed without prejudice to the continuing force and validity of the remaining conditions.
10. In the case of a Trust Company we acknowledge that the Trustee shall be liable on the account and that in addition the assets of the trust are available to meet payment of the account.

11. Change of ownership - Registered Particulars- The Customer shall no later than 14 days prior to any proposed changes of ownership, change in Registered Particulars, alteration, addition to the share holding or directorship, notify the Supplier of the proposed change and the Customer shall notify the Supplier of any change, alteration or addition to the Customer's internal structure and shall provide full details of the proposed change, alteration or addition, to the Supplier and the Customer shall be liable for any goods supplied by the Supplier after such change alteration or addition unless the Supplier shall have acknowledged by writing acceptance of the intending change, alteration or addition.
12. The Customer hereby charges the land upon which the goods are situated or the work carried out and other land owned or in the future acquired by the Customer from time to time and the Customer agrees immediately upon being required by the Supplier to enter into a mortgage to be prepared by the Supplier's solicitors on the terms and conditions as the Supplier's Solicitor shall think fit to secure any sum due hereunder and the Customer further agrees and permits and authorises the Supplier to register a caveat over any land now owned by the Customer or in the future acquired by the Customer to secure any sum due hereunder at any time during the continuance of the agreement.
13. Privacy Act. Acknowledgment that credit information may be given to a credit reporting agency, the Customer understands that section 18E(8)(c) of the Act allows the Supplier to give a credit reporting agency certain personal information about the Customer. The information which may be given to an agency is covered by section 18E(1) of the Act and includes: Particulars to identify the Customer, The fact that the Customer has applied for credit and the amount, The fact that the Supplier is a credit provider to the Customer, Payments which become overdue more than 60 days, Advice that payments are no longer overdue, Cheques of \$100 or more drawn by the Customer which a Bank has dishonoured more than once, In specified circumstances, that in the opinion of the Supplier the Customer has committed a serious credit infringement, That the credit provided to the Customer by the Supplier has been discharged.
14. Authority for the Supplier to obtain certain credit information. To enable the Supplier to assess the Customer application for commercial or personal credit, the Customer authorised the Supplier as follows: If asked to provide commercial credit, to obtain from a credit reporting agency a credit report containing personal credit information about the Customer. This is in accordance with section 18K (1)(b) of the Act. If asked to provide personal credit, to use a credit report containing information about the Customer's commercial activities or commercial creditworthiness from a business which provides information about the commercial creditworthiness of a person. This is in accordance with section 18L (4) of the Act.
15. Authority to exchange information with other credit providers. In accordance with section 18N (1)(b) of the Act, the Customer authorised the Supplier to give to and receive from the credit providers named overleaf or that may be named in a credit report issued by a credit reporting agency, information in the supplier's possession or the other credit provider's possession about the Customer's creditworthiness, credit standing, credit history and credit capacity. The Customer understands the information may be used to: (a) Assess an application for credit by the Customer, (b) Assist the Supplier in avoiding default on the Customer's credit obligations, (c) Notify other credit providers of a default by the Customer, (d) Assess Customer's creditworthiness.
16. Liability
  - 16.1 Except as specifically set out herein, any term, condition or warranty in respect of the quality, merchantability, fitness for purpose, condition, description, assembly, manufacture or performance of the goods or services, whether implied by statute, common law, trade usage, custom or otherwise, is hereby expressly excluded:
  - 16.2 Subject to and to the extent permitted by the law applicable to the sale of goods or supply of services, replacement or repair of the goods is the absolute limit of the Supplier's liability howsoever arising under or in connection with the supply of the goods, the description, quality, condition, performance, assembly, manufacture, merchantability or fitness for purpose of the goods or alternatively the sale, use of, storage or any other dealings with the goods by the Customer or any third party.
  - 16.3 The Supplier is not liable for any direct, indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party.
  - 16.4 Nothing in these conditions is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Commonwealth Law applicable to the sale of goods or supply of services which cannot be excluded, restricted or modified.
  - 16.5 Any advice, recommendation, information or assistance provided by the Supplier in relation to the goods supplied by it or their use or application is given in good faith, is believed by the Supplier to be appropriate and reliable, however, it is provided with a disclaimer for any liability or responsibility on the part of the Supplier.