



F-300 STANDARD TERMS AND CONDITIONS OF SUPPLY

STANDARD TERMS AND CONDITIONS OF SUPPLY

The supply of Products by Smartline Medical Pty Ltd (ABN 34119209611) to the Customer will be subject to these terms and conditions of supply.

1. Definitions

In this document (including the Schedule):

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Consignment Contract means a contract between Smartline Medical and the Customer under which Smartline Medical supplies, and the Customer accepts, Goods on a consignment basis, as formed in accordance with clause 7.1.

Consignment Site, in respect of particular Consignment Stock, means the site where Smartline Medical makes Delivery of that Consignment Stock pursuant to an Order.

Consignment Stock means Goods supplied by Smartline Medical to the Customer on a consignment basis (including, without limitation, Goods that are contained, on Delivery, in packaging marked or labelled "consignment stock" (or words to similar effect)).

Contract means a Consignment Contract or a Sale Contract (as the context requires).

Customer means the person or legal entity by or on behalf of whom the relevant Order is made.

Delivery means:

(a) in the case of Goods, Smartline Medical making the Goods available for physical collection by or on behalf of the Customer at the place for delivery stipulated in the Order (or otherwise by the Customer) and agreed to by Smartline Medical or, if no such place is stipulated by the Customer, the usual place for delivery to that Customer shown in Smartline Medical's customer records; and

(b) in the case of Services, Smartline Medical completing the performance of the required Services.

Goods means any medical devices, instruments, machines, equipment, apparatus or other goods supplied or distributed in Australia from time to time by or on behalf of Smartline Medical or any of its related bodies corporate.

GST has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insolvency Event has the meaning given in clause 13.8.

Intellectual Property has the meaning given in clause 10.5.

Maximum Quantity, in respect of a particular type of Goods, means the maximum quantity of that type of Goods that Smartline Medical is prepared to have on consignment at the Consignment Site at any given time.

Smartline Medical Standard Terms means these standard terms and conditions of supply for Australia, as varied by Smartline Medical from time to time.

Order means an order (whether made in writing or orally) by the Customer:

(a) to purchase Goods from Smartline Medical;

(b) for Goods to be supplied by Smartline Medical to the Customer on a consignment basis; or

(c) for Services to be supplied by Smartline Medical to the Customer, (as applicable).

Products means Goods or Services supplied, or agreed to be supplied (as the context requires), by Smartline Medical to the Customer pursuant to an Order.

Returns Policy means Smartline Medical's policy for the return of Goods in Australia (as amended from time to time), a current copy of which is set out in the Schedule.

Sale Contract means a contract between Smartline Medical and the Customer for the sale by Smartline Medical, and the purchase by the Customer, of Products, as formed in accordance with clause 2.7.

Saleable Condition, in respect of Goods, means that (in Smartline Medical's reasonable opinion):

(a) the Goods are in their original packaging, unused, unopened and undamaged, and without any label, sticker or marking placed by the Customer on either the Goods or the packaging; and

(b) if delivered in sterile packaging, the Goods are of uncompromised sterility and integrity (examples of compromised integrity include broken sterilised seals and missing or damaged temperature gauges); and

(c) if the Goods have an expiry date, the expiry date is not within the next 12 months.

Services means any repair, maintenance or other technical services in relation to any Goods.

2. Quotations and Orders

2.1 Any quotations from Smartline Medical are valid for a period of 30 days from the date of issue or otherwise as specified in the quotation.

2.2 Prices given by Smartline Medical in any quotation are applicable to that quotation only.

2.3 All Orders must be placed in the manner and form, and contain the information, required by Smartline Medical from time to time.

2.4 By making an Order, the Customer acknowledges that it is aware of the contents of, and agrees to be bound by, these Smartline Medical Standard Terms.

2.5 Smartline Medical may accept or reject an Order (in whole or part) in its discretion.

2.6 Smartline Medical's acknowledgement or confirmation of receipt of an Order does not constitute acceptance of the Order unless Smartline Medical expressly states otherwise in writing.

2.7 A Sale Contract in relation to all or some of the Products the subject of an Order to purchase Products (the **Relevant Products**) will be formed by and upon the first to occur of:

(a) Smartline Medical giving notice in writing to the Customer of acceptance of the Customer's Order in relation to the Relevant Products; or

(b) Delivery of the Relevant Products.

In the case of Goods in Consignment Stock, a Sale Contract will be taken to be formed by and upon the Customer withdrawing the Goods for use or purchase, or upon the Goods ceasing to be in Saleable Condition or being lost or stolen, whichever occurs first.

- 2.8 Each Contract will be governed by these Smartline Medical Standard Terms and they apply to the exclusion of any other terms and conditions that the Customer attempts or purports to stipulate or incorporate in connection with an Order (including any terms and conditions specified or referred to in or with the Order or in any other document provided by the Customer).
- 2.9 Neither Smartline Medical's acknowledgement of an Order nor its failure to object to any conflicting, different or additional terms and conditions proposed by the Customer will constitute, or be taken to constitute, an acceptance of those terms and conditions or a waiver of these Smartline Medical Standard Terms.
- 2.10 Smartline Medical may vary these Smartline Medical Standard Terms at any time. The revised Smartline Medical Standard Terms will apply to all Orders made after the varied Terms are published on Smartline Medical's website at www.smartlinemedical.com. The Customer is responsible for ensuring that it has read and understood the latest version of these Smartline Medical Standard Terms.

3. Prices and GST

- 3.1 The purchase price for each Product ordered by a Customer will be:
 - (a) the price for that Product quoted in writing by Smartline Medical to the Customer (or otherwise agreed in writing between the parties) in connection with the Order; or
 - (b) if no such quote was given or price agreed, the price set out in Smartline Medical's prevailing price list for the supply of the relevant Products in Australia, as in effect at the time the Product is supplied to the Customer.
- 3.2 All prices on any Smartline Medical price lists are subject to change without notice.
- 3.3 Smartline Medical will be entitled to charge the Customer a surcharge of \$30.00 (plus GST) for any Order equal to or less than \$300.00 (plus GST).
- 3.4 If GST is levied or imposed on or in respect of any supply made by a party (the **Supplier**) under or in connection with a Contract, then the recipient of that supply (the **Recipient**) must, in addition to the purchase price or other consideration payable for that supply under these Smartline Medical Standard Terms (**GST Exclusive Consideration**), pay the Supplier an amount on account of GST calculated by multiplying the GST Exclusive Consideration by the GST rate prevailing at the time that the supply is made.
- 3.5 The Recipient is only required to pay an amount for GST in respect of a taxable supply to it once the Recipient has received a tax invoice from the Supplier.
- 3.6 If a payment to a party under or in connection with a Contract is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will first be reduced by the amount of any input tax credit to which that party is entitled for an acquisition to which that loss, cost or expense relates and then, if consideration for a taxable supply, will be increased on account of GST in accordance with clause 3.4.
- 3.7 In clauses 3.4 to 3.6, words or expressions that are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning as in that Act.

4. Payment

- 4.1 The Customer must pay Smartline Medical the purchase price for the Products and any other amounts (including any GST) payable in relation to a Contract, in full, within 14 days of the date of the invoice issued by Smartline Medical in respect of those Products.
- 4.2 If Smartline Medical, in its sole discretion, requires advance cash payment or satisfactory security, then the Customer must provide the required payment or security to Smartline Medical prior to any future supply of Products by Smartline Medical.
- 4.3 In the event that any amount not paid is referred to a debt collector or legal counsel for collection, the Customer must reimburse Smartline Medical, on a full indemnity basis, for all legal costs and expenses incurred in pursuing payment of the overdue amount.
- 4.4 The Customer may not set off any money owing or alleged to be owed by Smartline Medical against money due by the Customer to Smartline Medical.
- 4.5 The Customer must, on demand by Smartline Medical, pay an admin fee calculated at the rate of 3% of the total amount stated on the invoice on any amounts due and unpaid in relation to a Contract, calculated on daily balances from the due date for payment until the actual date of payment and capitalised monthly.

Where, after acceptance of an Order by Smartline, the Customer:

- a) requests a Variation;
- b) changes the date for delivery of an Order (in whole or part), or requests a change to the date for delivery of an Order (in whole or part), or otherwise refuses to accept delivery of an Order (in whole or part);
- c) prevents or inhibits Smartline's performance of the Contract (including, without limitation, withholding or delaying the supply of information or provision of access to any location); or

- d) otherwise causes a material change to the nature of the supply under the Contract which causes, or is likely to cause, Smartline additional unanticipated costs or expenses,

Smartline may, in its absolute discretion, and without limiting its other rights under these Conditions or at law, seek its reasonable costs and expenses as a result of such act by the Customer.

5. Delivery

- 5.1 Subject to clause 5.2, and unless agreed otherwise, Delivery of Goods the subject of an Order will be made on the basis of Free Into Store (FIS) or Delivered Duty Paid (DDP) as defined in INCOTERMS 2010.
- 5.2 If the Customer requests express freight of Goods or any non-standard form of delivery, Smartline Medical may, in its discretion, require the Customer to bear all freight and delivery costs incurred by Smartline Medical in satisfying the Customer's requirements. Where applicable, any such costs will be invoiced to and payable by the Customer at the same time as the purchase price for the relevant Goods.
- 5.3 Any dates for Delivery given by Smartline Medical to the Customer are estimates only and Smartline Medical will not be liable for failure to deliver, or for any delay in Delivery, of any Products, however arising.
- 5.4 Smartline Medical reserves the right to make partial deliveries of Goods the subject of an Order or deliveries by instalments and to issue interim invoices to the Customer. In those circumstances, a separate Contract will be formed in respect of each separate Delivery of Goods.
- 5.5 The Customer agrees to accept Delivery of any Goods the subject of an Order at any time between 9.00am and 5.00pm on a business day.
- 5.6 If the Customer refuses or is unable to accept Delivery of any Goods in accordance with clause 5.5, the Customer will, in addition to being liable to pay for the Goods, be liable to pay Smartline Medical for all costs of freight, storage, insurance, interest and extra costs of handling that may be incurred by Smartline Medical as a result of such refusal or inability to accept Delivery.
- 5.7 Any unloading or loading of Goods at the Delivery place will be the Customer's responsibility, unless otherwise agreed in writing by Smartline Medical.
- 5.8 An acknowledgement or receipt for Products signed on behalf of the Customer will be conclusive evidence of Delivery.

6. Risk and title

- 6.1 Risk in all Goods passes to the Customer at the time of Delivery.
- 6.2 Full legal and equitable ownership of, and title to, Goods (other than Consignment Stock) passes to the Customer at the time of Delivery or the time at which the Customer makes full payment to Smartline Medical (in cleared funds) of all amounts payable for the Goods under the relevant Sale Contract, whichever occurs later. Smartline Medical retains full ownership of and title to all Goods until that time.
- 6.3 Smartline Medical will retain full legal and equitable ownership of, and title to, all Goods that are Consignment Stock until:
 - (a) the Customer withdraws those Goods from the Consignment Stock for use or purchase pursuant to a Consignment Contract; or
 - (b) if the Goods cease to be in a Saleable Condition or are lost or stolen, the time at which the Customer makes full payment to Smartline Medical (in cleared funds) of the purchase price for those Goods and any other amounts payable in respect of the Goods under these Smartline Medical Standard Terms (whichever occurs first).

7. Consignment terms and conditions

- 7.1 A Consignment Contract in relation to all or some of the Goods the subject of an Order for consignment of Goods (the **Relevant Goods**) will be formed by and upon the first to occur of:
 - (a) Smartline Medical giving notice in writing to the Customer of acceptance of the Customer's Order in relation to the Relevant Goods; or
 - (b) Delivery of the Relevant Goods.
- 7.2 Within 10 days of any Goods in Consignment Stock being used by the Customer, the Customer must issue to Smartline Medical an Order to purchase the used Goods. The Customer's Order must include a description of the Goods, the Consignment Site and any other information requested by Smartline Medical. Smartline Medical will promptly issue to the Customer an invoice for such Goods at the applicable purchase price, as determined under clause 3.1 (plus any GST).
- 7.3 The Customer must take out and maintain adequate insurance cover for the loss, damage or destruction of any Consignment Stock, following Delivery to the Customer, in accordance with its policies and usual practices, and Smartline Medical's interest in such Consignment Stock must be recorded on the policy if possible. If requested, the Customer must promptly provide a certificate of currency for each policy to Smartline Medical.
- 7.4 The Customer must, in respect of all Consignment Stock held by the Customer:
 - (a) segregate the Consignment Stock from all other goods of the Customer or any third party and conspicuously identify the Consignment Stock as Smartline Medical's property;
 - (b) maintain suitable premises for the storage of all Consignment Stock and store all Consignment Stock in a safe and secure manner to avoid any loss, theft, damage or unauthorised access (including by following any

- instructions provided by Smartline Medical or the manufacturer in relation to storage and ensuring that Consignment Stock is stored within the prescribed temperature range and in an area free from pests) and the Customer accepts full responsibility for any loss or damage arising from a failure to comply with this clause;
- (c) use reasonable endeavours to use first the Goods in the Consignment Stock that have the nearest expiry date (if relevant) - that is, to use Products on a "first- expiring, first-out" basis;
 - (d) keep records of its use of Consignment Stock, including date of use and serial and product codes;
 - (e) segregate any potentially contaminated Goods from the Consignment Stock to avoid cross-contamination and to prevent distribution to other users and/or customers; and
 - (f) advise Smartline Medical immediately if any part of the Consignment Stock is moved.
- 7.5 The Customer may not move or transfer Goods in the Consignment Stock to another site without Smartline Medical's prior written consent.
- 7.6 Where Smartline Medical gives the Customer notice in writing of a Maximum Quantity in respect of any type of Goods in the Consignment Stock, Smartline Medical will replenish the Consignment Stock at the Consignment Site to, and only to, the Maximum Quantity for the relevant type of Goods specified in that notice (as varied from time to time).
- 7.7 Notwithstanding clause 7.6, if any Goods in the Consignment Stock are in short supply, Smartline Medical may allocate the available supply of those Goods in the manner that Smartline Medical considers in its absolute discretion the most equitable.
- 7.8 Smartline Medical retains the right to decrease the Maximum Quantity for any type of Goods in the Consignment Stock to a level in keeping with the number of that type of Goods purchased by the Customer per annum.
- 7.9 The Customer agrees to grant Smartline Medical access to the Consignment Site during business hours to carry out quarterly stocktakes of the Consignment Stock, and at other times on reasonable notice. Any Goods not in a Saleable Condition will not be counted as part of the Consignment Stock for the purposes of the stocktake.
- 7.10 The Customer must issue a purchase order in order for Smartline Medical to replenish any shortfall in the Consignment Stock, including for any Goods that are not in a Saleable Condition.
- 7.11 Smartline Medical will be entitled to invoice the Customer for Goods in Consignment Stock that are not in a Saleable Condition within 30 days of its discovery of such Goods.
- 7.12 Smartline Medical will endeavour to notify the Customer of any recent or impending obsolescence of Goods in the Consignment Stock. The Customer agrees either to return such Goods (subject to compliance with the Returns Policy) or to issue to Smartline Medical a purchase order for such Goods within 14 days of being notified of obsolescence.

8. Cancellation

- 8.1 The Customer may not under any circumstances cancel an Order without Smartline Medical's consent and except upon terms which will indemnify Smartline Medical against any and all loss, costs and charges resulting from the cancellation.
- 8.2 If Smartline Medical consents to the Customer's cancellation of an Order for Goods and the Goods have already been collected or dispatched from Smartline Medical's warehouse (whether or not received by the Customer), the Customer must pay to Smartline Medical a restocking fee of \$65.00 (plus GST) or 15% of the value of those Goods, whichever is the greater.
- 8.3 No alterations to specifications in an Order, including quantity, type, Delivery or design details, may be made without the written consent of Smartline Medical and subsequent adjustment or confirmation of prices by Smartline Medical.
- 8.4 Smartline Medical reserves the right to change or modify the design of any of its Goods without any obligation to furnish or install such changes or modifications on Goods previously or subsequently supplied.

9. Returns Policy

- 9.1 If the Customer claims that any Goods do not conform to the description set out in the Order or have been short-delivered or were damaged on or prior to Delivery, then the Customer will give written notice to Smartline Medical within 7 days after Delivery and preserve the Goods intact and make them available for inspection by Smartline Medical's representatives at the Customer's or Smartline Medical's premises, as Smartline Medical may elect.
- 9.2 The procedure and conditions for the return of Goods are set out in the Returns Policy. Smartline Medical will not accept Goods for return, exchange or credit unless the requirements of the Returns Policy are strictly satisfied (or otherwise required by law).
- 9.3 Where Smartline Medical accepts the return of any Goods from the Customer, the Customer must pay to Smartline Medical a restocking fee of \$65.00 (plus GST) or 20% of the value of the Goods being returned, whichever is the greater. However, this fee is not payable where the Goods are in Consignment Stock or are returned because they were damaged on or prior to Delivery, incorrectly delivered due to an error by Smartline Medical, or faulty or defective.
- 9.4 Where Delivery is made on the basis of Ex-Works (as defined in INCOTERMS 2010) from Smartline Medical's premises, any claims for shortage or damage in transit must be made by the Customer against the carrier. To the extent of any inconsistency between this clause and the Returns Policy, this clause prevails.

10. Intellectual Property and confidential information

- 10.1 The Customer acknowledges that all right, title and interest in and to Intellectual Property is the sole property of, or licensed by, Smartline Medical (as the case may be) and the Customer will gain no rights, title or interest in or to the

Intellectual Property whatsoever.

- 10.2 The Customer specifically acknowledges Smartline Medical's exclusive rights to ownership of any modification, translation or adaptation of Products or Smartline Medical's documentation relating to Products and any other improvement or development based thereon, whether developed, supplied, installed or paid for by or on behalf of the Customer or any customer of the Customer or otherwise.
- 10.3 The Customer may only use the Intellectual Property for any purposes reasonably necessary for, or reasonably incidental to, the use of Products for their intended purpose and must not allow any third party to use the Intellectual Property unless prior written consent has been obtained from Smartline Medical. The Customer must not, and must not permit any person reasonably within its control nor procure any person to, modify, copy, clone or reverse engineer any Products, or copy, modify or decompile any of Smartline Medical's documentation relating to Products.
- 10.4 If the Customer receives any information from Smartline Medical in connection with Products that is, by its nature, confidential or that the Customer is or ought reasonably to be aware is confidential, the Customer must keep that information confidential and not disclose the whole or any part of the information to a third party unless: it receives the prior written consent of Smartline Medical; such information enters the public domain (other than as a result of a breach of any obligation of confidence owed by the Customer); such disclosure is reasonably necessary for any purposes described in clause 10.3; or such disclosure is required by law or the rules of any applicable stock exchange.
- 10.5 In this clause 10, **Intellectual Property** means any and all present and future intellectual property rights conferred or recognised by statute, common law or equity in or relating to any Products, including such rights in or in respect of patents, inventions, improvements, designs, drawings, instruction booklets, specifications, circuit layouts, computer software, programs and databases, technical data, formulae, componentry, confidential information, trade secrets, trademarks, business names, trade names, domain names, logos, knowhow and copyright, and any application or right to apply for registration of, and any license or right to use, any such rights.

11. Warranties

- 11.1 To the maximum extent permitted by law, Smartline Medical makes no warranties, representations or guarantees to the Customer except to the extent expressly set out in these Smartline Medical Standard Terms or otherwise expressly stated by Smartline Medical in writing.
- 11.2 Unless otherwise expressly stated by Smartline Medical in relation to any Goods (and subject to clauses 11.3, 11.4 and 12.4), Smartline Medical warrants that all Goods supplied under a Sale Contract will be free from any material defect in workmanship and materials (**Standard Goods Warranty**) for a period ending:
 - (a) where no expiry date is expressly provided by Smartline Medical or the manufacturer for the Goods, 12 months from the date of the invoice in respect of the Goods; or
 - (b) where an expiry date is expressly provided by Smartline Medical or the manufacturer for the Goods, on that expiry date.

(Warranty Period).
- 11.3 Where, at the time of supply, any Goods include or are accompanied by an express, written warranty provided by the manufacturer or Smartline Medical, the Standard Goods Warranty does not apply.
- 11.4 The Standard Goods Warranty does not cover any damage to, fault in, or failure or malfunction of, any Goods where and to the extent that it results from any of the following:
 - (a) causes beyond the reasonable control of Smartline Medical, including but not limited to accident, abuse, misuse, mechanical or electrical overload, abrasion, corrosion, erosion or chemical attack or any force majeure event as described in clause 14;
 - (b) incorrect assembly, installation, use, storage or application of the Goods by the Customer or a third party;
 - (c) modification or repair of the Goods without Smartline Medical's prior written consent;
 - (d) failure to comply with all written and oral instructions of Smartline Medical or the manufacturer regarding the assembly, installation, use, storage, application and/or processing of the Goods;
 - (e) failure to perform required preventative maintenance; or
 - (f) normal wear and tear.
- 11.5 If any defect in any Goods becomes apparent and is notified to Smartline Medical during the Warranty Period and is covered by the Standard Goods Warranty, Smartline Medical will (in its absolute discretion) repair or replace the Goods or take any other action contemplated by clause 12.1.
- 11.6 Unless otherwise expressly stated by Smartline Medical in relation to any Goods, any replacement or repaired Goods will be covered by the unexpired portion of the Warranty Period in respect of the original Goods or for a period of 90 days from the date of replacement or repair, whichever period is longer.
- 11.7 Smartline Medical warrants that all Services supplied under a Sale Contract will be rendered with due care and skill (**Standard Services Warranty**). If any breach of this warranty becomes apparent and is notified to Smartline Medical within 90 days after Delivery of the relevant Services, Smartline Medical will (in its absolute discretion) rectify or re-supply the Services (or any part of them) or pay the cost of having the Services (or any part of them) supplied again.
- 11.8 To the extent that any Products supplied by Smartline Medical are supplies to a 'consumer' as defined in the Australian Consumer Law, Smartline Medical will comply with any applicable consumer guarantees and following statements:
 - (a) where the Products are only Goods:

'Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably

foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure'

(b) where the Products are only Services:

'Our services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

- to cancel your service contract with us; and
- to a refund for the unused portion, or to compensation for its reduced value.

You are also entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure you are entitled to have problems with the service rectified in a reasonable time and, if this is not done, to cancel your contract and obtain a refund for the unused portion of the contract'; and

(c) where the Products are Goods and Services:

'Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

- to cancel your service contract with us; and
- to a refund for the unused portion, or to compensation for its reduced value.

You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.'

11.9 The Standard Goods Warranty and Standard Services Warranty (**Standard Warranties**) are given by Smartline Medical, 55 Cordwell Road, Yandina Qld 4561

11.10 To claim any entitlement under a Standard Warranty (as well as any reasonable expenses incurred in making the claim), the Customer must follow the procedure for making warranty claims set out in section 4 of the Returns Policy.

11.11 The Standard Warranties are in addition to any other rights or remedies available to the Customer under the Australian Consumer Law (or under any other applicable law in relation to Products).

12. Limitation of liability

12.1 To the maximum extent permitted by law, Smartline Medical's liability for a breach of any warranty, guarantee or condition given by or binding on Smartline Medical in relation to any Goods (including the Standard Goods Warranty and any guarantee that applies in relation to the Goods under the Australian Consumer Law) is limited to (as Smartline Medical may elect in its absolute discretion):

- (a) the replacement of the Goods;
- (b) the supply of equivalent Goods;
- (c) the repair of the Goods;
- (d) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
- (e) the payment of the cost of having the Goods repaired.

12.2 To the maximum extent permitted by law, Smartline Medical's liability for a breach of any warranty, guarantee or condition given by or binding on Smartline Medical in relation to any Services (including the Standard Services Warranty and any guarantee that applies in relation to the Services under the Australian Consumer Law) is limited to (as Smartline Medical may elect in its absolute discretion):

- (a) the supplying of the Services again; or
- (b) the payment of the cost of having the Services supplied again.

12.3 To the maximum extent permitted by law and notwithstanding any provision to the contrary in these Smartline Medical Standard Terms, Smartline Medical's total liability (whether that liability arises in contract, tort (including negligence) or equity, or under statute or otherwise) for any and all liabilities, losses, damages, costs or expenses (including legal costs and expenses, whether incurred or awarded) (together **Losses**) arising out of or in connection with the supply, sale or use of any Products or any breach by Smartline Medical of a Contract (including, but not limited to, any breach by Smartline Medical of the Standard Goods Warranty or the Standard Services Warranty) will be limited to the aggregate purchase price paid by the Customer to Smartline Medical for Products supplied under that Contract and in no event will Smartline Medical be liable for any Consequential Loss.

12.4 **Consequential Loss** means: (a) any loss (whether direct or indirect, anticipated or otherwise) of profits, revenue, goodwill, savings, use of Products, data, contracts, business opportunities or reputation; (b) any special, consequential, indirect, exemplary or punitive Losses; and (c) any Losses suffered by the Customer that cannot reasonably be considered to arise naturally from the event, events or breach giving rise to the Losses (and, in each case, whether arising in contract, tort (including negligence) or equity, or under statute or otherwise).

12.5 To the maximum extent permitted by law, for any Goods or equipment forming part of any Goods that are not manufactured by Smartline Medical or any of its related bodies corporate, Smartline Medical's liability (if any) for such Goods or equipment will not exceed the liability of the manufacturer.

12.6 Except to the extent expressly stated in clauses 12.1 and 12.2, nothing in this clause 12 (or in any other provision of these Smartline Medical Standard Terms) excludes, modifies or restricts any rights or remedies a Customer may have under the Australian Consumer Law.

13. Default and termination

13.1 If:

- (a) the Customer defaults in any payment due to Smartline Medical under, or breaches any other term of, a Sale Contract or these Smartline Medical Standard Terms; or
- (b) an Insolvency Event occurs in respect of the Customer,
- then Smartline Medical may, without prejudice to any other rights Smartline Medical has under any Contract, terminate the Sale Contract and/or any other contracts between Smartline Medical and the Customer by giving notice in writing to the Customer.
- 13.2 If the Customer fails to make any payment when due under a Contract or any Insolvency Event occurs in respect of the Customer, Smartline Medical or its representative may (without notice and without prejudice to any of its other rights and remedies) recover, repossess and/or resell (and otherwise enforce its security interest in) any or all of the Goods in which title has not passed to the Customer under clause 6 above, and may (for that purpose, and by its representatives) enter the Customer's premises or any other place those Goods are stored by the Customer and remove the Goods (including by detaching them from any other goods to which they may be attached or from any land to which they may be fixed), without being liable for any loss or damage caused. Nothing in this clause limits Smartline Medical's rights or the Customer's obligations arising apart from under this clause 13.2.
- 13.3 Smartline Medical or the Customer may immediately terminate a Consignment Contract by giving notice in writing to the other party in any of the following circumstances:
- (a) the other party commits a material breach of that Contract or these Smartline Medical Standard Terms and has not remedied that breach within 30 days after receiving written notice from the party requiring it to do so; or
- (b) any Insolvency Event occurs in respect of the other party.
- 13.4 Either Smartline Medical or the Customer may terminate a Consignment Contract upon 60 days' prior written notice to the other party.
- 13.5 Upon termination of a Consignment Contract, the Customer agrees to:
- (a) issue a purchase Order for the Goods in the Consignment Stock that the Customer wishes to purchase; and
- (b) return to the Supplier the Goods in the Consignment Stock that the Customer does not wish to purchase provided however that the Goods must be in Saleable Condition.
- 13.6 Smartline Medical will issue an invoice to the Customer for any shortfall in the Consignment Stock and/or Products that are not in a Saleable Condition, at the applicable purchase price, as determined under clause 3.1 (plus any GST).
- 13.7 Upon termination of a Contract, all obligations and liabilities of Smartline Medical and the Customer will cease but any accrued rights and entitlements remain.
- 13.8 In this clause 13, an **Insolvency Event**, in respect of Smartline Medical or the Customer (the **relevant party**), means that:
- (a) the relevant party is or becomes insolvent, fails or is unable or admits its inability to pay its debts as they become due or is presumed to be insolvent under an applicable law (including, where applicable, section 459C(2) of the *Corporations Act 2001* (Cth));
- (b) the relevant party has bankruptcy, insolvency or winding up proceedings initiated or instituted by or against it;
- (c) a secured creditor or mortgagee enters into possession or disposes of the whole or any part of the relevant party's assets or business;
- (d) the relevant party makes any assignment for the benefit of, or proposes, enters into or makes any arrangement, compromise or composition with, its creditors;
- (e) the relevant party has a liquidator, provisional liquidator, receiver, receiver and manager, trustee in bankruptcy or an administrator or any other similar official appointed (whether or not by a court) to it or in respect of all or any part of its property, assets or undertaking;
- (f) the relevant party is otherwise wound up or dissolved; or
- (g) the relevant party ceases to carry on business or any licence or authorisation it requires to carry on business is suspended or revoked.

14. Force majeure

Smartline Medical's obligations under any Contract will be suspended and Smartline Medical will not be liable for any failure to fulfil or any delay in fulfilling any obligation arising from a Contract where, to the extent and for so long as, Smartline Medical is prevented from or delayed in carrying out that obligation, in whole or in part, because of any event of force majeure including, but not limited to, an accident, breakage or failure of machinery or apparatus, shortage of manufacturing capacity, withdrawal of business licence by the Government, war, riot, civil disorder, rebellion or revolution, act of terrorism, sabotage or other labor stoppage, epidemic, natural disaster such as flood, typhoon or earthquake, fire affecting Smartline Medical's operations or the operations of a supplier of Smartline Medical, inability to obtain fuel, power, raw materials, container or transportation facilities, any other act of God or any act or omission of a third party (other than an act or omission of an officer, employee, contractor or agent of Smartline Medical) that is outside the reasonable control of Smartline Medical.

15. Personal Property Securities Act 2009 (Cth) (PPSA)

- 15.1 The Customer acknowledges that, until such time as title in Goods has passed to the Customer in accordance with clause 6 above, the interest of Smartline Medical in Goods supplied under a Contract and in all proceeds from the sale of those Goods by the Customer to a third party is a security interest.
- 15.2 The Customer consents to Smartline Medical registering its security interest on the Personal Property Securities Register and agrees to provide all assistance (such as obtaining consents, signing and producing documents and entering into a further agreement in relation to the security interest) reasonably required by Smartline Medical for the

purposes of:

- (a) facilitating such registration;
- (b) ensuring that Smartline Medical's security interest is enforceable against the Customer and third parties, perfected and otherwise effective, and has the priority required by Smartline Medical; and/or
- (c) enabling Smartline Medical to exercise rights in connection with the security interest.

15.3 Until such time as title in Goods has passed to the Customer in accordance with clause 6 above, the Customer acknowledges and agrees that:

- (a) those Goods will be held by the Customer as bailee and trustee for Smartline Medical;
- (b) the Customer must separately store those Goods in such a way as to show clearly that they are the property of Smartline Medical and maintain the Goods in satisfactory condition;
- (c) the Customer must not in any way assign, charge, encumber, lease or otherwise deal with those Goods in such a manner as to create a security interest over the Products in favour of the Customer or any third party; and
- (d) the Customer must maintain adequate insurance cover for the loss, damage or destruction of the Goods in accordance with its policies and usual practices.

The parties agree that this clause will not prohibit the Customer from using or selling Goods in the ordinary course of business on the condition that the Customer must hold so much of the proceeds of any such sale as does not exceed the total outstanding amount owing by the Customer to Smartline Medical under a Contract relating to the Goods on trust for Smartline Medical in a separate account, and account to Smartline Medical for those proceeds on demand.

- 15.4 The Customer waives its rights to receive any notice under the PPSA (including any notice of verification statement) unless the notice is required by that Act and cannot be excluded.
- 15.5 Smartline Medical and the Customer agree that each Contract and all related information and document(s) are confidential and will not be disclosed to unauthorised representatives or third parties, except to the extent disclosure is permitted by these Smartline Medical Standard Terms or required by law. Smartline Medical and the Customer agree that neither Smartline Medical nor the Customer will disclose such confidential information pursuant to a request under section 275(1) of the PPSA.
- 15.6 To the extent permitted by law, Smartline Medical and the Customer agree that the following provisions of the PPSA will not apply in relation to the enforcement of Smartline Medical's security interest in any Goods (or the proceeds of sale of any Goods) supplied to the Customer under a Contract: sections 95, 117, 118, 121(4), 125, 127, 129(2), 129(3), 130, 132(3)(d), 132(4), 135, 136(5), 137(3), 142 and 143 of the PPSA.
- 15.7 For the purposes of section 14(6) of the PPSA, the Customer and Smartline Medical agree that Smartline Medical may apply any payments it receives from the Customer in connection with a Contract towards amounts owing to Smartline Medical in such order as it chooses (in its discretion).
- 15.8 Expressions defined in the PPSA have the same meaning when used in this clause 15 of the Smartline Medical Standard Terms.

16. Product recalls

In the event that any Goods supplied to the Customer are subject to a recall, field safety alert or hazard alert (whether initiated by Smartline Medical or any governmental agency or regulatory authority, and whether mandatory or voluntary), the Customer agrees to provide all assistance reasonably requested by Smartline Medical (including providing Smartline Medical with details of the identity and contact details of any person to whom the Goods have been supplied by the Customer) and to comply with all reasonable directions of Smartline Medical, in connection with the recall or alert.

17. Compliance with law

In carrying on the Customer's business, the Customer must comply with its obligations under the law including without limitation, the Customer must itself, and must procure any person reasonably within its control to:

- (a) not pay, offer or promise to pay, or authorise the payment of, any monies or anything of value, directly or indirectly, to any government official or employee, any official or employee of a state-run or state-owned or controlled enterprise or entity, any official or employee of a public international organisation, any candidate for political or public office, any official or employee of any political party, or any family member or relative of such persons or any political party for the purpose of influencing any act or decision of any such official, employee, candidate, political party, enterprise or entity, public organisation or government to obtain or retain business, or direct business to any person or entity, or for any other improper advantage or purpose; and
- (b) comply with all applicable export and import laws and regulations, including associated embargo and sanction regulations and, unless authorised by applicable governmental licence or regulation, not directly or indirectly export or re-export any technical information or software subject to these Smartline Medical Standard Terms (including direct products of such technical information or software) to any prohibited destination or country (including release to nationals, wherever they may be located, of any prohibited country) as specified in such applicable export regulations, and

in the event the Customer breaches its obligations under this clause, Smartline Medical may immediately terminate any Contract and/or other contracts and the Customer must indemnify and hold harmless Smartline Medical against any and all claims, losses, damages, penalties or fines related to such breach. This clause will survive the termination or expiration of a Contract.

18. Choice of law and jurisdiction

- 18.1 Each Contract and these Smartline Medical Standard Terms will be governed by and construed in accordance with the laws of Queensland.
- 18.2 The Customer unconditionally submits to the non- exclusive jurisdiction of the courts of Queensland.
- 18.3 A Sale Contract is not governed by the United Nations Convention on Contracts for the International Sale of Goods.

19. General

19.1 In this document (including the Schedule):

- (a) the singular includes the plural and vice versa;
 - (b) another grammatical form of a defined word or expression has a corresponding meaning;
 - (c) a reference to a clause is to a clause of these Smartline Medical Standard Terms;
 - (d) a reference to a document includes a document in electronic form;
 - (e) a reference to \$ is to Australian dollars;
 - (f) a reference to any supply or other act by or of Smartline Medical includes a supply made, or other act done, on Smartline Medical's behalf by a person or entity acting as Smartline Medical's duly authorised representative or agent;
 - (g) the terms "including", "includes", "for example", "in particular" and similar expressions are illustrative only and do not limit the meaning of the words preceding them; and
 - (h) a reference to writing includes any mode of representing or reproducing words, figures, drawings or symbols in visible form.
- 19.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from these Standard Terms, but the rest of the Standard Terms are not affected.
- 19.3 The waiver by Smartline Medical of any provision or breach by the Customer of any provision of a Contract will not be construed as a waiver of any other provision or breach of any other provision, or of any subsequent breach of the same or any other provision of the Contract.
- 19.4 Smartline Medical's failure to exercise or delay in exercising a right, power or remedy does not constitute a waiver of the right, power or remedy. Any waiver must be agreed in writing by Smartline Medical.
- 19.5 Any notice to be given to a party under a Contract must be in writing and must be sent by post, facsimile or email to the address, facsimile number (if any) or email address of that party specified or referred to below or such other address, facsimile number or email address as the party may from time to time notify the other party in accordance with this clause:
- (a) in the case of Smartline Medical: Address: 55 Cordwell Road, QLD 4556
and
 - (b) in the case of the Customer, the address, facsimile number or email address specified in the Order or, if not so specified, noted in Smartline Medical's customer records as the contact address, facsimile number or email address for the Customer.
- 19.6 Where there is more than one Customer under a Contract, then the liability of each will be joint and several.
- 19.7 A Contract and any right or obligation of the Customer under it cannot be assigned or transferred by the Customer without the prior written consent of Smartline Medical.
- 19.8 Smartline Medical may sub-contract the performance of all or part of its obligations under a Contract.
- 19.9 A Contract may be varied only by agreement in writing of each party.
- 19.10 Notwithstanding anything to the contrary in these Smartline Medical Standard Terms, in the event that Smartline Medical is supplying Products pursuant to a current, written and signed agreement between Smartline Medical and the Customer, where there is any inconsistency between these Smartline Medical Standard Terms and that written agreement, the terms and conditions of that agreement will prevail to the extent of the inconsistency.

SCHEDULE - POLICY FOR THE RETURN OF GOODS IN AUSTRALIA

This Policy is to be read in conjunction with the Smartline Medical Standard Terms and Conditions of Supply for Australia (**Smartline Medical Standard Terms**). Terms defined in the Smartline Medical Standard Terms have the same meaning in this Policy, unless the context requires otherwise.

1. Circumstances in which Goods may be returned

- 1.1 Subject to the terms of this Policy, Smartline Medical may accept the return of Goods sold or consigned by Smartline Medical to a Customer where it is satisfied that the Goods:
- (a) were damaged on or prior to Delivery;
 - (b) were incorrectly delivered (by type or quantity) due to an error by Smartline Medical;
 - (c) are suitable for return in accordance with section 3.1 (and not excluded under section 3.3) below; or
 - (d) have a fault or defect for which the Customer is entitled to make a claim under any applicable warranty given by, or statutory guarantee binding on, Smartline Medical (**Warranty Claim**).
- 1.2 The table below is a guide to the sections of this Policy that are applicable and relevant in the various circumstances covered by the Policy.

Circumstances	Reference
Goods damaged on or prior to Delivery. Goods incorrectly delivered due to an error by Smartline Medical.	See <u>section 2</u> for the procedure for arranging the return of these Goods.
Goods that the Customer wishes to return due to an incorrect order or "change of mind".	See <u>sections 2 and 3</u> of this Policy for the procedure, conditions and fee for arranging the return of these Goods.
Faulty or defective Goods (including capital equipment and consumables) or defective Services.	See <u>section 4</u> below for the procedure for making a Warranty Claim.

- 1.3 No Goods will be accepted by Smartline Medical for return, exchange or credit unless the procedure and conditions set out in this policy are strictly satisfied (or otherwise required by law). Unauthorised returns will not be accepted and will be returned to the Customer at its expense.

2. Procedure for the return of Goods

- 2.1 To arrange for the return of Goods (other than faulty or defective Goods)
- Delivery or incorrectly delivered (whether due to an error by Smartline Medical or the Customer), within 7 days of Delivery; or
 - otherwise, within 3 months of Delivery.
- 2.2 The Customer will need to provide the following information:
- purchase order number or dispatch note number for the Goods to be returned;
 - product code for those Goods;
 - number or quantity of those Goods;
 - detailed reasons for the return of the Goods; and
 - if Smartline Medical will be responsible for collecting the Goods, the address of the premises from where the Goods are to be collected together with the name, telephone and fax numbers, and email address of the Customer's contact person.
- 2.3 Where any Goods damaged on or prior to Delivery or incorrectly delivered due to an error by Smartline Medical, or for the return of any Goods in Consignment Stock, Smartline Medical will arrange for the collection of the Goods via Smartline Medical's appointed carrier (at Smartline Medical's expense). The Smartline Medical representative may make alternative return arrangements with the Customer for the return of Products.
- 2.4 In all other cases, the Customer must (at the Customer's expense) deliver or arrange the delivery of the relevant Goods to Smartline Medical (to the address specified in section 2.6 below).
- 2.5 Goods to be returned to Smartline Medical (whether via its appointed carrier or otherwise) must be included in packaging that is clearly addressed as follows:
Smartline Medical, 55 Cordwell Road, Qld 4561
- 2.6 If requested by Smartline Medical, returned Goods must be accompanied by: evidence of the original purchase and/or delivery of the Goods; written confirmation by the Customer that the Goods have been stored under any specific, required conditions (eg, a temperature controlled environment) notified to the Customer at or before the time of Delivery; and/or any other information reasonably required by Smartline Medical.
- 2.7 It's not guarantee that returned Goods will be accepted by Smartline Medical or that a credit or refund will be provided. Smartline Medical reserves the right to reject any returned Goods where it determines that the return is not permitted under section 1.1 and to return those Goods to the Customer at the Customer's expense.
- 2.8 Where Smartline Medical receives and accepts Goods returned by
a Customer in accordance with this Policy, Smartline Medical may (in its absolute discretion):
- provide the Customer with a credit or refund for the Goods, or (in the case of damaged Goods) repaired or replacement Goods; and
 - deduct from any amount to be credited or refunded any restocking fee payable by the Customer under section 3.5 and any freight or other transportation costs incurred by Smartline Medical in delivering the Goods to the Customer and/or collecting the Goods from the Customer (except where this Policy provides for those costs to be borne by Smartline Medical).

To avoid doubt, no credit or refund will be provided or paid where the returned Goods are Consignment Stock, and this clause does not limit the remedies available to Smartline Medical where Goods are returned due to a Warranty

Claim.

2.9 Smartline Medical will not accept any liability for any loss or damage to Consignment Stock:

- (a) not transported by Smartline Medical's appointed carrier;
- (b) transported without the agreement of a Smartline Medical representative; or
- (c) transported in inappropriate packaging.

Any such loss or damage will be invoiced to the Customer at the purchase price of the lost or damaged Goods, as determined under the Smartline Medical Standard Terms (plus any GST).

3. Conditions and fee for the return of Goods

3.1 Except for any Goods damaged on or prior to Delivery (or otherwise faulty or defective), Goods are suitable for return only if (in Smartline Medical's reasonable opinion) they are:

- (a) standard, non-customised Goods;
- (b) returned within 3 months of Delivery;
- (c) in Saleable Condition (as defined in the Smartline Medical Standard Terms);
- (d) if delivered with other Goods as a shipping unit, returned in the original, unbroken shipping unit; and
- (e) if delivered as part of a bundle of several Goods charged at a single price, returned in the whole, original bundle of Goods.

3.2 Smartline Medical will issue an invoice to the Customer for any Goods in Consignment Stock that are returned to Smartline Medical not in a Saleable Condition (except where Smartline Medical accepts the return of a Product under section 3.2 above). The purchase price for those Goods will be determined in accordance with the Smartline Medical Standard Terms.

3.3 Where Smartline Medical accepts the return of any Goods, the Customer must pay to Smartline Medical a restocking fee of \$65.00 (plus GST) or 15% of the value of the Goods being returned, whichever is the greater. However, this fee is not payable where the Goods are in Consignment Stock or are returned because they were damaged on or prior to Delivery, incorrectly delivered due to an error by Smartline Medical, or faulty or defective.

4. Procedure for making a Warranty Claim

4.1 To make a Warranty Claim in respect of faulty or defective Goods, the Customer must contact:

- the Customer's Smartline Medical Sales Representative or Customer Service

4.2 To make a Warranty Claim in respect of any defect in the supply of Services, the Customer must contact Technical Services

4.3 The Customer should notify Smartline Medical within 14 days of becoming aware of any Warranty Claim in relation to Goods or Services.

4.4 The Customer will need to provide the following information when making a Warranty Claim in relation to faulty or defective Goods or Services:

- (a) the product code for the Goods (where relevant);
- (b) the serial number for the Goods (where relevant);
- (c) details of the basis of the Warranty Claim; and
- (d) if requested by Smartline Medical, the address of the premises where the Goods are located, together with the name, telephone and fax numbers, and email address of the Customer's contact person.

4.5 Once notified of a Warranty Claim, Smartline Medical may (in its absolute discretion):

- (a) require the Customer to deliver or arrange the delivery of the relevant Goods to Smartline Medical (to the address specified in section 4.7 below
- (b) arrange for the collection (at Smartline Medical's expense) of the Goods via Smartline Medical's appointed carrier or a Smartline Medical Sales Representative, and/or
- (c) arrange for a representative of Smartline Medical to attend the premises at which the Goods are located to inspect the Goods and (at Smartline Medical's discretion) to undertake any necessary repairs covered by the warranty or guarantee giving rise to the Warranty Claim.

4.6 It's not guarantee that the Customer's Warranty Claim will be accepted by Smartline Medical or that the Customer is entitled to have any Goods repaired or replaced or Services re-supplied at Smartline Medical's expense or to receive a refund or any other remedy.

4.7 Any Goods returned by a Customer to Smartline Medical under a Warranty Claim must be included in packaging that is clearly addressed as follows:

Smartline Medical
55 Cordwell Road, Qld 4561

4.8 If requested by Smartline Medical, Goods returned under a Warranty Claim must be accompanied by: evidence of the original purchase and/or delivery of the Goods; written confirmation by the Customer that the Goods have been stored under any specific, required conditions (eg, a temperature controlled environment) notified to the Customer at or before Delivery; written details of the basis of the Warranty Claim; and/or any other information reasonably required by Smartline Medical.

4.9 Where Smartline Medical collects or receives Goods from a Customer under a Warranty Claim, Smartline Medical will determine what action (if any) will be taken in relation to the Claim following (where required) analysis of the Goods by Smartline Medical's service and repairs department.

4.10 Smartline Medical will bear any reasonable expenses incurred by the Customer in the process of making a valid Warranty Claim (such as reasonable postage or freight costs incurred in delivering the relevant Goods to Smartline

Medical, at Smartline Medical's request under section 4.5(a)), and will reimburse the Customer for any such expenses following receipt from the Customer of satisfactory evidence of those expenses. To make a claim for any such reasonable expenses, the Customer must contact Smartline Medical via the relevant department specified in section 4.1 or 4.2 (as applicable) and follow the instructions provided by that department.

4.11 Where Goods are repaired or replaced under any Warranty Claim, Smartline Medical will arrange for the repaired or replacement Goods to be delivered (at Smartline Medical's expense) to the address provided by the Customer when notifying Smartline Medical of the Warranty Claim (or any other address agreed in writing between Smartline Medical and the Customer).

5. General

5.1 If any inconsistency arises between the general provisions of this Policy and any specific, written information provided by Smartline Medical to the Customer in relation to the requirements for the return, refund, exchange, replacement or repair of any particular Goods, that specific information prevails to the extent of the inconsistency.

5.2 Nothing in this Policy excludes, modifies or restricts any rights a Customer may have under the Australian Consumer Law.