

TERMS AND CONDITIONS

- 1. General**

The whole of the agreement between ORTHOMAX PTY LTD (ABN 20 139 207 811) (**ORTHOMAX**) and the Applicant referred to in the Credit Application (**Customer**) are those set out in these Terms and Conditions and those, if any, which are implied, and which cannot be excluded by law (**Terms**). Any other contractual terms of the Customer (whether upon the Customer's order or elsewhere) which are contrary to or inconsistent with these Terms shall not apply nor shall they constitute a counter-offer. By placing an order for the goods, materials and/or parts supplied by ORTHOMAX under these Terms (**Goods**), the Customer shall be deemed to have accepted these Terms and to have agreed that they shall (unless expressly agreed in writing with ORTHOMAX) apply to the exclusion of all other written agreements with ORTHOMAX. All Goods are charged at the price prevailing at the date of invoice and any GST within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* or other government imposts shall be payable by the Customer in addition.
- 2. Credit Terms**
 - 2.1. Payment is due 30 days from the end of the month in which the Goods were delivered, unless otherwise stated in writing by ORTHOMAX.
 - 2.2. Notwithstanding clause 2.1, the first three orders must be paid by credit card in advance.
 - 2.3. If ORTHOMAX does not receive payment on the due date, ORTHOMAX may charge liquidated damages on the amount outstanding at a rate equivalent to two percent (2%) in excess of the rate of interest for the time being fixed under Section 2 of the *Penalty Interest Rates Act 1983*.
 - 2.4. Any payments received from the Customer on overdue accounts will be applied first to satisfy interest which may have accrued, second to reasonable expenses and legal costs referred to in clause 6, and then to the principal owing to ORTHOMAX.
 - 2.5. The Customer is liable for all reasonable expenses (including contingent expenses such as debt collection commission) and legal costs (on an indemnity or solicitor own client basis) incurred by ORTHOMAX for enforcement of obligations and recovery of monies due from the Customer to ORTHOMAX.
- 3. Quotations and Pricing**
 - 3.1. Prices charged will be according to a current quotation or determined by ORTHOMAX by reference to ORTHOMAX's standard prices in effect at the date of the order. This quotation is valid for a period of 30 days, without limiting ORTHOMAX's right to adjust pricing should external factors, including but not limited to, supplier prices, exchange rates or transport costs fluctuate. Subject to clause 15, ORTHOMAX reserves the right to increase the prices, however, it will not change any prices for an existing order that has been accepted by it.
 - 3.2. A quotation shall not constitute an offer and is subject to variation without notice by ORTHOMAX prior to the Customer's acceptance of the quotation. The Customer is responsible for ensuring the accuracy of all specifications, details, sizes and quantities which form the basis of a quotation and otherwise in accordance with clause 15. ORTHOMAX does not accept any responsibility for any errors in such specifications, details, sizes and quantities and shall fulfil the order in conformity with the information supplied by the Customer.
 - 3.3. Documents requiring signature may be signed in electronic form and are binding from the time a person affixes a signature on the Customer's behalf.
 - 3.4. Prices in quotations do not include (unless specified): (1) any statutory tax, including any GST, duty or impost levied in respect of the Goods and not allowed for by ORTHOMAX in calculating the price; or (2) costs and charges in relation to insurance, packing (other than ORTHOMAX's standard packing), crating, delivery (whether by road, rail, ship or air) and export of the Goods.
 - 3.5. These Terms shall not be affected by any impositions or alterations of customs duties or by decisions of the Australian Customs and Border Protection Service with regard to either classification or value of duty or landing charges. Any such impositions shall be payable by the Customer.
- 4. Delivery and Supply**
 - 4.1. Freight charges shall be paid by the Customer.
 - 4.2. Any times quoted for delivery and/or supply are estimates only and ORTHOMAX shall not be liable for failure to deliver/supply, or for delay in delivery/supply. The Customer shall not be relieved of any obligation to accept or pay for Goods, by reason of any delay in delivery/supply or dispatch. ORTHOMAX reserves the right to stop supply at any time if the Customer fails to comply with these Terms.
 - 4.3. ORTHOMAX may refuse to supply any order in its absolute discretion and may make acceptance of an order conditional upon receiving a satisfactory credit assessment of the Customer.
 - 4.4. The risk of damage, loss or deterioration of any Goods will pass to the Customer upon the earlier of dispatch or expiry of fourteen (14) days from the date of notification by ORTHOMAX to the Customer that the Goods are available for collection.
 - 4.5. The Customer is deemed to accept delivery of the Goods where it is either delivered to the Customer's premises or when ORTHOMAX notifies the Customer that the Goods are available for collection.
 - 4.6. If the Customer directs that delivery of the Goods be staggered over different times or to different addresses from those specified in the Credit Application, then the Customer: -
 - 4.6.1. Shall be liable for any additional cost, charge and expense incurred by ORTHOMAX in complying with the Customer's direction; and
 - 4.6.2. Shall pay for the whole of the invoiced value of the Goods pursuant to clause 3 notwithstanding the staggered deliveries or that the Customer may not have signed a receipt for the Goods.
 - 4.7. If the Customer is unable or fails to accept delivery of the Goods, ORTHOMAX may deliver them to a place of storage nominated by the Customer and, failing such nomination, to a place determined by ORTHOMAX. Such action shall be deemed to be delivery to the Customer. The Customer shall be liable for all cost, charge and expense incurred by ORTHOMAX on account of storage, detention, double cartage/delivery or similar causes.
- 5. Property**
 - 5.1. Until full payment has been made for all Goods, and any other sums in any way outstanding from the Customer to ORTHOMAX from time to time: -
 - 5.1.1. All sums outstanding become immediately due and payable by the Customer to ORTHOMAX if the Customer makes default in paying any other sums due to ORTHOMAX, becomes bankrupt, or commits any act of bankruptcy, compounds with its creditors, has judgment entered against it in any court or, being a company, has a provisional liquidator, liquidator, receiver, receiver manager or administrator appointed, notwithstanding the provisions of any other clause in these Terms.
 - 5.1.2. The Customer is only authorised to sell the Goods (or any portion of them) to third parties as the fiduciary agent of ORTHOMAX provided that there shall be no right to bind ORTHOMAX to any liability to such third party by contract or otherwise. All payments (direct or indirect) received from such third parties by the Customer for the Goods (or any portion of them) shall be held on trust for ORTHOMAX pursuant to the fiduciary relationship.
 - 5.1.3. In the event that the Customer incorporates or transforms the Goods (or any portion of them) into any other goods or products produced by the Customer (or a third party), then the Customer must hold a proportion of any payment (**Relevant Proportion**) received by the Customer for such goods or products on trust for ORTHOMAX. The Customer expressly acknowledges that the Relevant Proportion shall be equal to the dollar value of the Goods incorporated or transformed and the Customer further acknowledges that any part payment (not exceeding the Relevant Proportion) received by the Customer for such goods or products is received as payment first of the Relevant Proportion.
 - 5.2. In addition to any lien to which ORTHOMAX may, by statute or otherwise, be entitled, ORTHOMAX shall in the event of the Customer's insolvency, bankruptcy or winding up, be entitled to a general lien over all property or goods belonging to the Customer in the possession of ORTHOMAX (although all or some of such property or goods may have been paid) for the unpaid price of any Goods sold or delivered to the Customer under this or any other contract
- 6. Personal Property Security Interest**
 - 6.1. The Customer grants a security interest in the Goods and the proceeds (as defined in the *Personal Property Securities Act 2009* (**PPSA**)) to secure the obligation to pay the purchase price of the Goods and other of its obligations to ORTHOMAX under these Terms (together the "**Indebtedness**"). The Customer warrants that the Goods are not purchased for personal, domestic or household purposes.
 - 6.2. Where the Goods and/or proceeds are not readily identifiable and/or traceable or their recoverable value is insufficient to pay the Indebtedness, the security interest shall also extend to all the goods present and after acquired by the Customer, of which the Goods form part, to the extent required to secure the Indebtedness.
 - 6.3. The Customer waives any right to receive notice in relation to any registration or amendment to a registration on the Personal Property Security Register (**PPSR**). At the Customer's own expense, it will provide all reasonable assistance and relevant information to enable ORTHOMAX to register on the PPSR and generally to obtain, maintain, register and enforce the security interests created by these Terms.
 - 6.4. Any payments received from the Customer shall be deemed to be made and applied by ORTHOMAX in the following order (unless ORTHOMAX otherwise determines): (1) to any obligation owed by the Customer which is unsecured, in the order in which the obligations were incurred; (2) to any obligations that are secured, but not by a purchase money security interest (**PMSI**), in the order in which those obligations were incurred (3) to obligations that are secured by a PMSI, in the order in which those obligations were incurred.
 - 6.5. Until the Customer has paid all money owing to ORTHOMAX, the Customer must at all times ensure that (1) all Goods, while in the possession of the Customer, can be readily identified and distinguished, and/or (2) all proceeds (in whatever form) that the Customer receives from the sale of any of the Goods are readily identifiable and traceable.
 - 6.6. Subject to clause 5.1.2, if the Goods are held by the Customer as inventory (as defined in the PPSA), then the Customer may sell or lease the Goods in the ordinary course of business. Otherwise until the Customer has paid all money owing to it the Customer must not sell or grant a security interest in the Goods without the Customer's written consent.
 - 6.7. To the extent permissible by law, the Customer agrees that the following provisions of the PPSA will not apply and it will have no rights under them: Section 95 (to the extent that it requires the secured party to give notices to the grantor); section 96; section 118 (to the extent that it allows a secured party to give notice to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142; section 143.
 - 6.8. Section 115(7) of the PPSA allows for the contracting out of provision of the PPSA, the following provisions of the PPSA will not apply and the Customer will not have any rights under them: section 127; section 129(2), (3); section 130(1); section 132; section 134(2); section 135; section 136(3), (4) and (5) and section 137.
 - 6.9. Unless otherwise agreed and to the extent permitted by the PPSA, the parties agree not to disclose any information of a kind referred to in section 275(1) of the PPSA to an interested person or any other person. The Customer waives

any right it may have, or but for this clause may have had, under section 275(7)(c) of the PPSA to authorise the disclosure of the above information.

7. Availability of Stock

Any order that cannot be fulfilled on its receipt will automatically be back ordered and processed when stock becomes available unless it is the Customer's stated standard policy not to accept back orders or it specifically marks its order, "Do Not Back Order". Deliveries at any time are subject to availability of stock and ORTHOMAX will not be liable for any charges due to product unavailability.

8. Returns, Cancellations and Claims

8.1. *Returns* - The Customer shall not return any Goods to ORTHOMAX without obtaining prior authorisation from ORTHOMAX and within 30 days of the original invoice date. All Goods returned must be received in an unused and undamaged condition in their original packaging. ORTHOMAX reserves the right to refuse returns outside of the standard 30 day return period. Restocking fees for any returns accepted outside of the standard return period will be applied. Any return freight costs incurred will be at the expense of the Customer.

8.2. *Cancellation* - No cancellations or partial cancellation of an order by the Customer shall be accepted by ORTHOMAX unless it has first consented in writing to such cancellation or partial cancellation and unless a cancellation charge has been paid which, as determined by ORTHOMAX, will indemnify ORTHOMAX against all loss, without limitation. Cancellation will not be accepted unless it is made within 48 hours of the acceptance of the quotation.

8.3. *Complaints* - Subject to clause 11, all complaints, claims, or notification of lost Goods, incomplete Goods, Goods damaged in transit or Goods that do not comply with the Customer's purchase order must be submitted by the Customer to ORTHOMAX in writing within 7 business days of delivery. Otherwise, the Customer shall be deemed to have accepted the Goods as being fit for their intended purpose.

9. Consent to Credit Check - Privacy Act 1988 (Privacy Act)

9.1. By signing ORTHOMAX's Customer and Credit Application form, the Customer, and its directors/officers, acknowledge and agree that the Privacy Act allows ORTHOMAX to give a credit reporting agency certain personal information about the Customer, and its directors/officers, at any time after signing such form.

9.2. The Customer, and its directors/officers, acknowledge and agree that ORTHOMAX may make such enquiries as it deems necessary to investigate the Customer's credit worthiness from time to time, including (but without limiting the generality of the foregoing) the making of enquiries with persons nominated as trade references, external accountants, bankers or other credit providers or credit reporting agency (**Information Sources**). The Customer authorises the Information Sources to disclose to ORTHOMAX such information concerning the Customer which is within their possession and is requested by ORTHOMAX in relation to the Customer's credit worthiness. Upon written request, the Customer will provide ORTHOMAX with financial information relating to the Customer.

9.3. The Customer, and its directors/officers, agree that the information provided on its Customer and Credit Application may be disclosed to a credit reporting agency or any other interested person in accordance with the Privacy Act (as amended).

9.4. ORTHOMAX shall, and shall ensure that its employees, agents and advisers to whom the information is disclosed, only use such information for the purposes of assessing the Customer's ongoing credit worthiness and must keep the existence and the terms of that information confidential except where: (1) the information is public knowledge (not being due to a breach of these Terms); or (2) disclosure is required by law or a regulatory body.

9.5. No other use of the Customer, and its directors/officers' personal information will be made without consent. A request to access, update or correct any information should be directed to: Privacy Officer, ORTHOMAX, PO Box 156 Burwood VIC 3125.

10. Notification

The Customer must notify ORTHOMAX in writing within seven (7) days of: -

- 10.1. Any alteration of the name or ownership of the Customer.
- 10.2. The issue of any legal proceedings against the Customer.
- 10.3. The appointment of any provisional liquidator, liquidator, receiver, receiver manager or administrator to the Customer.
- 10.4. Change in the ownership of the business name of the Customer. The Customer agrees that it shall be liable to ORTHOMAX for all Goods supplied to the new owner by ORTHOMAX until notice of any such change is received.

11. Warranties

11.1. ORTHOMAX guarantees that the Goods provided will be fit for their intended purpose (**Guarantee**) for the length of time guaranteed by the manufacturer / supplier of the Goods from the date of delivery.

11.2. The Guarantee in clause 11.1 is only valid if the Customer uses consumables and spare parts supplied by ORTHOMAX. Any use of consumables or spare parts not supplied by ORTHOMAX will void the Guarantee with immediate effect.

11.3. Nothing in this clause 11 is intended to restrict or exclude any warranty implied and that by law cannot be excluded given by ORTHOMAX in respect of Goods supplied. To the full extent permitted by law, ORTHOMAX will not be liable under any circumstances for consequential damages of any nature whatsoever.

11.4. The Customer acknowledges and warrants that it has relied on its own skill and judgment or, alternatively, on the skill and judgment professional advisers retained by it to provide advice and assistance on the suitability of the Goods for specific purposes and procedures and, in this respect, shall indemnify ORTHOMAX from and against any suit, claim, demand or compensation which, but for these Terms, the Customer may have had against

ORTHOMAX, except if the Customer is a consumer for the purposes of the Australian Consumer Law or these Terms are deemed to be a small business contract under the Australian Consumer Law.

11.5. The Customer warrants to ORTHOMAX that it is purchasing Goods as the principal and not as an agent.

12. Intellectual Property

12.1. All intellectual property rights (including all rights resulting from intellectual activity and includes copyright, inventions, patent rights, registered and unregistered trademarks, design rights, circuit layouts and all rights and interests of a like nature, including but not limited to methods and techniques, together with any documentation relating to such ORTHOMAX's rights and interests), including those developed during the supply of the Goods remain the sole property of ORTHOMAX at all times.

12.2. If ORTHOMAX terminates these Terms, it may immediately reclaim any material incorporating its intellectual property and the Customer grants it an irrevocable licence to enter upon the Customer's premises to reclaim such material without incurring liability to the Customer or any other person.

13. Force Majeure

ORTHOMAX shall be released from its obligations in the event of national emergency, war, prohibitive governmental regulation or if any other cause beyond the control of the parties renders provision of the Goods impossible, where all money due to ORTHOMAX shall be paid immediately and, unless prohibited by law, ORTHOMAX may elect to terminate these Terms.

14. Variation

14.1. ORTHOMAX may vary these Terms by providing written notice to the Customer (by email, conventional mail or by posting the amended terms on the website).

14.2. If the Customer are a Consumer, or these Terms are deemed to be a Small Business Contract, and the Customer does not deem the variation acceptable, the Customer may elect not to proceed with the purchase of the Goods ordered before the date of the variation, but which are intended to be subject to the variation.

14.3. If the Customer is not a Consumer and these Terms are not deemed to be a Small Business Contract, the Customer agrees that the variation applies from the date of receiving notice of the varied Terms.

15. Failure to Act

ORTHOMAX's failure to enforce or insist upon the timely performance of any term, condition, covenant or provision in these Terms, or ORTHOMAX's failure to exercise any right or remedy available under these Terms or at law, or ORTHOMAX's failure to insist upon timely payment of monies when due or to demand payment of any charges or fees which accrue or any extension of creditor forbearance under these Terms shall not constitute a waiver of any subsequent default or a waiver of ORTHOMAX's right to demand timely payment of future obligations or strict compliance with the Terms.

16. Legal Construction

16.1. These Terms shall be governed by and interpreted according to the laws of Victoria and ORTHOMAX and the Customer consent and submit to the jurisdiction of the Courts of Victoria.

16.2. Notwithstanding that any provision of these Terms may prove to be illegal or unenforceable pursuant to any statute or rule of law or for any other reason that provision is deemed omitted without affecting the legality of the remaining provisions and the remaining provisions of these Terms shall continue in full force and effect.