

Gulmohar Dental Pty Ltd
A.C.N. 141 097 958
Terms and Condition of Sales

1. **DEFINITIONS**

In these "Terms & Conditions of Sales":

- a) The "Seller" means Gulmohar Dental Pty Ltd
- b) The "Buyer" means the person or corporation who buys or agrees to buy the Goods,
- c) The "Goods" means any item of whatsoever nature, which is sold by the Seller,
- d) "Terms" means these "Terms & Conditions of Sales",
- e) The "PPS Act" means the Personal Property Securities Act 2009 (Cth), and
- e) The terms "attaches", "collateral", "proceeds" "purchase money security interest" and "security interest" have the meanings given to them in the PPS Act, and "perfection" and "perfecting" have a meaning corresponding with the definition of "perfected" in the PPS Act.

2. **GENERAL**

Notwithstanding anything contained in any order or other document from the Buyer, these Terms shall be the only terms, conditions or warranties applicable with the exception of any amendments agreed to by the Seller in writing

3. **FUTURE DEALING**

Unless otherwise agreed to in writing by the Seller and notwithstanding any terms appearing in documentation provided by or on behalf of the Buyer, these Terms shall apply to all subsequent agreements by the Seller to supply the Buyer with goods.

4. **PAYMENT**

Unless otherwise agreed by the parties in writing, payment shall be thirty (30) days from the date of invoice and date of delivery docket.

5. **INSOLVENCY & DEFAULT**

If:

- a) The Buyer makes default in any payment due hereunder;
- b) A resolution is passed or proposed or a petition is presented or an application filed for the winding up of the Buyer;
- c) A receiver or receiver and Manager is appointed of the property or any part of the property by the Buyer;
- d) The Buyer makes or proposes to make any arrangement with its Creditors;
- e) The Buyer is placed under official management; or
- f) Execution is levied upon the assets of the Buyer for an amount in excess of \$1,000.00 and is not within seven (7) days satisfied, payment of all amounts owing to the Seller shall immediately become due and payable, the Buyer must not sell, dispose of any interest in, or create any interest in, or otherwise deal with the goods or purport to do so and the Seller may at its option withhold further deliveries or cancel any contract without prejudice to its rights hereunder.

6. **PROPERTY**

- a) Property in the Goods shall remain with the Seller and the Seller reserves the right to dispose of the goods until such time as:
 - i) full payment is made for all amounts owing by the Buyer to the Seller so that the Buyer's total indebtedness to the Seller under these Terms is discharged; or
 - ii) the Buyer sells the goods to his customers in the ordinary course of business.
- b) If the Buyer fails to pay any amount to the Buyer's total indebtedness to the Seller under these Terms when it is due to the Seller or, in the event of default as specified in the next sub-clause hereof, occurs the Seller may without notice and without prejudice to any other rights or remedies may enter upon the Buyer's premises or any premises where the goods are stored and re-take possession of all those goods; and the Buyer in the event of failure to pay as required hereby gives all permissions and consents necessary to allow the Seller to re-take possession of those goods.
- c) The Buyer grants the Seller a lien over all goods delivered to the Buyer by the Seller and that lien shall be dissolved upon the Buyer paying all amounts due and owing to the Seller
- d) The Buyer acknowledges that until his total indebtedness under these Terms to the Seller is discharged, a fiduciary relationship exists between them.
- e) Until the goods are paid for in full, the Buyer:
 - (i) must protect and insure the Goods;
 - (ii) must separately store the Goods and clearly mark the Goods as being the property of the Seller; and
 - (ii) may sell the Goods in the ordinary course of business, but only in its capacity as fiduciary agent of the Seller. All proceeds received directly or indirectly from any dealing with the Goods are held by the Buyer on trust for the Seller until the Buyer's liability to the Seller is fully discharged

7. **RISK**

- a) Unless otherwise agreed in writing, all goods shall be at the Buyer's risk upon delivery to the Buyer his carrier or agent.
- b) To the extent permitted by law, the Buyer assumes all risks and liabilities for consequences arising from the use of the Goods whether singly or in combination with other and indemnifies the Seller in respect of any such use. The Seller is not liable for any infringement of patent rights arising out of the use of Goods by the Buyer or the Buyer's instructions, express or implied. It is the responsibility of the Buyer to ensure that the Goods, when used by the Buyer, are not damaged and no liability will be accepted by the Seller for the consequences of the use of damaged goods by the Buyer.

8. **SECURITY INTERESTS AND THE PPS ACT**

- a) The Buyer acknowledges that The Seller has, under these Terms, security interests in the goods until title in the goods passes to the Buyer in accordance with clause 6, subject to the PPS Act. Each such security interest secures payment by the Buyer of all amounts owing from time to time by the Buyer to The Seller, whether on account of the supply of goods or otherwise. To avoid any doubt, each such security interest attaches to the proceeds of collateral constituted by the goods, notwithstanding that the Buyer may have dealt in any way with the goods (including by selling or using up the goods as expressly permitted under clause 6).
- b) Each security interest arising under these Terms attaches to goods when the Buyer obtains possession of the goods. The Seller and the Buyer acknowledge that they have not agreed that any such security interest attaches at any later time.
- c) The Buyer agrees to implement, maintain and comply in all material respects with, procedures for the perfection of each security interest arising under these Terms under the PPS Act, including taking all steps necessary:
 - (i) for The Seller to obtain the highest ranking priority possible in respect of each such security interest (such as perfecting a purchase money security interest); and
 - (ii) to reduce as far as possible the risk of a third party acquiring an interest free of The Seller's security interests in the goods.
- d) Any time the Buyer makes a payment to The Seller, irrespective of whether the payment is made under or in connection with goods or otherwise under these Terms. The Seller may apply that payment:
 - (i) first, to satisfy any obligation that is not secured;
 - (ii) secondly, to satisfy an obligation that is secured, but not by a purchase money security interest; and
 - (iii) thirdly, to satisfy an obligation that is secured by a purchase money security interest for that obligation and using proceeds from the sale of the collateral subject to that purchase money security interest; and
 - (iv) fourthly, to satisfy an obligation that is secured by a purchase money security interest using funds or proceeds from any source;or, despite the foregoing, in any manner The Seller sees fit.
- e) If chapter 4 of the PPS Act would otherwise apply to the enforcement of a security interest arising under these Terms, the Buyer agrees that following provisions of the PPS Act will not apply to the enforcement of that security interest: Sections 95 (to the extent

that it requires The Seller to give a notice to the Buyer), 120, 121(4), 125, 128, 130 (to the extent that it requires The Seller to give a notice to the Buyer), 132(3)(d), 132(4), 135, 142 and 143.

f) Without limiting the operation of clause 8.e):

- (i) the Seller need not give any notice under the PPS Act (including a notice of verification statement) unless the notice is required by the PPS Act and cannot be excluded; and
- (ii) if The Seller is required to give a notice to the Buyer under the PPS Act, and the Buyer may, under the PPS Act, waive the Buyer's right to receive that notice, then the Buyer hereby waives that right.

9. **GUARANTEE & WARRANTY**

- a) Nothing in these Terms is intended to exclude, restrict or modify any statutory obligation of the seller implied by the Competition and Consumer Act 2010 or any Legislation which cannot be lawfully excluded.
- b) Except where the Buyer is a Consumer for the purpose of Competition and Consumer Act 2010 and the conditions and warranties and rights implied by that statute cannot be excluded, and subject always thereto representations promises, statements, warranties and conditions [whether (subject as aforesaid) statutory express or implied] regarding any good or services supplied by or on behalf of the Seller are expressly excluded. To the extent permitted by law the Seller shall not be liable for any loss or damage whatsoever and howsoever arising whether direct, indirect or consequential or in respect of any claim whenever and however made for any loss, damage, deterioration, deficiency or other fault of harm in the goods manufactured, work executed or services provided by or on behalf or in any arrangements with the Seller its servants or agents.
- c) As soon as any of the facts or matters, which form any part of any claim or complaint whatsoever become known to the Buyer, the Buyer shall within fourteen (14) days notify the Seller in writing of the same.
- d) The Seller's liability shall be limited in all circumstances to the repair or replacement or monetary compensation at the option of the Seller of any goods manufactured or sold by it which are returned upon written authority of the Seller.
- e) The seller shall not be liable in any circumstances for any:
 - (i) defects or damage caused in whole or in part by misuse, abuse, neglect, improper installation repair or alteration (other than by the Seller) or accident.
 - (ii) any transport, installation, removal, labour, or other costs.
 - (iii) goods not manufactured by it, but the Seller will endeavour to pass on to the Buyer the benefit of any claim made by the Seller and accepted by the Buyer and the benefit of any claim made by the Seller and accepted by the manufacturer of such goods under a warranty given by the manufacturer provided that nothing contained in this sub-paragraph shall limit the rights of the Buyer to proceed against the Seller pursuant to the Competition and Consumer Act 2010 .
 - (iv) technical advice or assistance given or rendered by it to the Buyer whether or not in connection with the manufacture, construction or supply of goods for or to the Purchaser provided always that the Company has rendered such service with due care and skill and that any materials supplied in connection with those services are reasonably fit for the purpose for which they are supplied.

10. **PRICE**

All Goods sold are at the price current at the time of delivery. The price, unless otherwise stated, includes delivery within the area stipulated in the sales contract only.

11. **FORCE MAJEURE**

Deliveries may be totally or partially suspended by the Seller during any period in which the Seller may be prevented or hindered from effecting delivery by its normal means of supply or delivery by normal route by reason of any circumstances outside its reasonable control (including, but not limited to strikes, lockouts, shortages of materials, accidents or breakdowns of plant or machinery). In the event that because of short supply of any material or finished stock the Seller should be unable to supply, it may in its sole and unfettered discretion supply a proportion of available supply to any of its customers without being thereby in breach of contract.

12. **INSURANCE**

In the event that the goods are covered by insurance taken out by the Seller, the Seller will only be liable to the extent of any indemnity provided.

13. **CLAIMS**

Unless the Buyer shall within seven (7) days from delivery of any Goods give notice to the Seller of any matter or thing by whereof it may be alleged that any Goods are not in accordance with these Terms, the said Goods shall be deemed to be in all respects in accordance with these Terms and the Buyer shall be bound to pay for the goods accordingly.

14. **WAIVER**

Failure by the Seller to insist upon strict performance of any term or condition hereof shall not be deemed a waiver thereof or of any rights which the Seller may have and shall not, and nor shall any express waiver, be deemed to be a waiver of any subsequent breach of any term or condition.

15. **WEIGHT**

In the absence of proven defect in Seller's system of weighing, the weight of Goods sold hereunder shall be the weight determined by the Seller's system of weighing prior to delivery.

16. **CANCELLATION**

Subject to any rights under the Competition and Consumer Act 2010 and without limiting any of the Buyer's rights, any order may only be cancelled, varied or suspended with the written consent of the Seller.

17. **HEALTH & SAFETY**

It is the Buyer's responsibility to ensure that all applicable health and safety regulations are observed and other appropriate steps taken in relation to the storage handling and use of the Goods and where information is supplied to the Buyer on potential hazards relating to the goods to bring such information to the attention of its employees agents sub-contractors, visitors and customers. Without prejudice to the foregoing, it is also the Buyer's responsibility to provide safe facilities for the reception of the Goods into storage. The Buyer hereby indemnifies and shall keep indemnified the Seller against all actions, claims, demands, summonses, suits, proceedings, judgements, orders or decrees arising out of, or in connection with, any act or omission of the Buyer in respect of its obligations pursuant to this clause.

18. **DESCRIPTION OF GOODS**

Any description of Goods has been given by way of identification only and the giving or use of such description shall not constitute any sale hereunder a sale by description.

19. **SUITABILITY OF GOODS**

As the seller cannot anticipate every possible application for its Goods nor variations in manufacturing equipment and methods, all Goods are sold on the condition that the Buyer relies on his own ability to determine the suitability of any goods for a particular purpose. Statements concerning the possible use of the Seller's Goods are not intended as recommendations for use.

20. **PROOF OF DELIVERY**

The Seller's delivery records shall be prime facie proof of delivery of the Goods of the quantity and description stated therein in good order to the Buyer.

21. **NOTICES**

Any notice, communication or other document authorised or required to be given pursuant to the Terms may be sent by telex or facsimile transmission.

VARIATION OF TERMS

22. These Terms may only be amended or varied by agreement in writing of the parties hereto.