

REJUVACARE INTERNATIONAL PTY LTD ABN 22 122 411 401

GENERAL TERMS AND CONDITIONS OF SALE

1 CONTRACT FORMATION

- 1.1 This contract is made between RejuvaCare International Pty Ltd (**Seller**) and the legal entity that submits an Offer (**Buyer**).
- 1.2 This contract commences on the date that the first Order is placed under it and applies to all Orders that are subsequently agreed to be fulfilled by Seller, until such time as the Buyer and Seller agree in writing that different general terms and conditions of sale will apply to Orders.
- 1.3 Nothing in this contract requires the Buyer to make any Offer, nor for the Seller to accept any Offer. Each Order is a separate agreement and is subject to the terms and conditions of this contract.
- 1.4 The Seller will provide the Buyer with its price list which includes details of the products, product specifications, prices, estimated delivery times and the degree to which the price can vary between the date of Order and the date of delivery based on a number of factors including without limitation exchange rate variations. The price list will apply to Orders accepted by the Seller within its validity period. The Seller will provide the Buyer with updated price lists during the period of this contract.
- 1.5 From time to time the Buyer may make an offer to purchase products from the Seller (**Offer**) by either:
 - (a) submitting a written Offer based on the products and details that are set out on the then current price list, together with a delivery address and requested delivery date;
 - (b) submitting a written Offer that is consistent with a quotation provided by the Seller within the validity period of the quotation. Any quotation will include the details of the products, product specifications, prices, quantities, payment arrangements, including without limitation any requirement for any form of security, the degree to which the price can vary between the date of Order and the date of delivery based on a number of factors including without limitation exchange rate variations, estimated delivery dates and delivery arrangements.
- 1.6 An Offer must state whether it is made on the basis of the prices for the products being fixed at the date of the Offer (**Offer Date Pricing**) or on the basis that the prices in the Offer will be varied to take into account the variations in the factors set out in the price list or quotation between the date of the Offer and the date of delivery (**Delivery Date Pricing**).
- 1.7 If the Buyer wishes to accept the Offer, or the parties agree to a varied Offer, the Buyer will issue its order confirmation document (**Order**) which will set out the agreed details of the transaction, including the products, product specifications, prices, quantities, payment arrangements, including without limitation any requirement for any form of security, (and if the Offer is based on Delivery Date Pricing, the mechanism for varying the pricing), estimated delivery dates, delivery arrangements and any other details that are agreed between the parties. The Order is binding on the parties from the date that the Seller sends the Buyer its order confirmation document.

- 1.8 If the Buyer believes there is an error in the Order the Buyer must provide written notice of the error to the Seller within 1 business day of receipt of the Order.

2 ORDERS, DELIVERY AND TITLE

- 2.1 The Seller will use all reasonable efforts to deliver the quantity of products, to the delivery address, by the estimated delivery dates, all as set out in the Order.
- 2.2 If for any reason the Seller becomes aware that it will not be able to deliver in accordance with its obligations under the Order and this contract it will promptly notify the Buyer (**Variance Notice**). The parties will promptly attempt to agree a reasonable solution that is acceptable to the Buyer, and if agreement is reached, the Seller will confirm that agreement by issuing a notice (**Variation Confirmation**) setting out the details of the agreement. The Order will be varied by the Variation Confirmation. If the parties cannot reach agreement within 5 business days of issue of the Variation Notice either party may cancel the Order by giving the other written notice of the cancellation within 5 business days of issue of the Variance Notice.
- 2.3 If an Order is cancelled under Article 2.1:
- (a) the Seller must refund any amount paid for the Order (or at its option set off the amount against any other amount that is due to the Seller) and this is the Seller's entire liability and the Buyer's sole remedy for the Seller not being able to provide the products as required;
 - (b) no other Order is affected.
- 2.4 Unless stated otherwise on an Order, the Seller is responsible for payment of any costs associated with:
- (a) transportation to the delivery address in Australia;
 - (b) goods in transit insurance for the products.
- 2.5 The Buyer must inspect the products at the time of delivery to ensure that they conform to the requirements of the Order and this contract. The products are deemed to meet the requirements of the Order and this contract in all respects unless the Seller receives written notice setting out the details of any alleged failure to meet the requirements of the Order and this contract (**Defect Notice**) within 7 days of:
- (a) the date that the products were delivered to the Buyer; or
 - (b) if the delivery address is not at the Buyer's address, the date that the Seller notified the Buyer that the products were ready for collection.
- 2.6 Risk in, and title to, the products passes to the Buyer at the time:
- (a) when the products have been delivered to the Buyer or the Buyer's agent; or
 - (b) if the delivery address is not at the Buyer's address, when the products have been received into the care and control of the Buyer or the Buyer's agent.
- 2.7 If the delivery address is not at the Buyer's address, then where the products have been made ready for collection by the Seller and the Buyer has not taken delivery of them within 8 days of the delivery date in the Order (or as subsequently agreed), the Seller may cancel the Order by giving the Buyer written notice.

- 2.8 If the Seller cancels the Order under Article 2.7 the Seller may resell the products and the Buyer must pay the Seller for all costs, expenses and losses incurred by the Buyer as a result of the Buyer's failure, including without limitation, storage, insurance, marketing, selling, delivery to any new customer as well as any loss resulting from a sale at a lower price.

3 PRICE, PAYMENT AND TAXES

- 3.1 In this contract **Tax** includes without limitation any withholding tax, excise, levy, impost, export or import duty, charge or other amount imposed by any government or any body exercising any licensing, permit, certification or other approval, in any jurisdiction, that is connected in any way with the product, transportation of the of the product, import or export of the product or the contract (other than taxes imposed upon the net income of the Seller). All Taxes must be paid by the Buyer in addition to the price, so that the net amount received by the Seller is the amount of the price irrespective of any Tax. The Buyer shall provide the Seller, upon request, with properly completed exemption certificates for any Tax from which the Buyer is entitled to (and claims) an exemption.
- 3.2 Unless otherwise expressly stated on an Order, the price for any products sold by the Seller to the Buyer does not include any Tax.
- 3.3 The Buyer must pay the Seller:
- (a) for an Order with Offer Date Pricing, the price, charges and all related Taxes set out on the Order (or as varied by the Variation Confirmation);
 - (b) for an Order with Delivery Date Pricing, the price, charges and all related Taxes set out on the Order (or as varied by the Variation Confirmation), subject to the variation by the pricing factors set out in the Order. The Seller will calculate the Delivery Date Pricing and set out that price on the invoice. The Seller's calculation of the varied pricing will be binding on the parties, in absence of manifest error.
- 3.4 Unless stated otherwise on an Order, the price, charges and related Taxes must be paid within 30 days of the date of issue of an invoice. Unless stated otherwise on an Order, invoices will be sent at the end of the month in which the delivery was made (or if the delivery address is not at the Buyer's address, at the end of the month in which the products were first made available for collection). Where there is a part delivery the Seller may invoice for that part delivery.
- 3.5 If the Buyer fails to make any payment when due, fails to provide any security requested by the Seller or the Seller believes at any time that the Buyer will not, or is unable to pay on the due date, the Seller may, without any liability to the Buyer, suspend delivery of the Order and all other Orders until the Buyer pays the price or provides the Seller with such other financial security that is acceptable to the Seller in its absolute discretion.
- 3.6 If the Buyer fails to pay any amount payable by the due date the Buyer may be liable for default interest on the amount not paid on time until the outstanding amount is paid. The interest will be calculated pursuant to the Penalty Interest Rate Act 1983 (Vic) as amended and varied from time to time and it will be calculated daily and capitalised monthly and is payable on demand.
- 3.7 The Seller may set off any amount owing to the Seller from the Buyer under this contract, any Order or any other contract against any amount owing to the Buyer from

the Seller. The Buyer may not set-off any amount owing to Seller against any other amount in any circumstances.

- 3.8 Money amounts in this contract and any Order are stated in Australian currency unless stated otherwise on an Order. All amounts must be paid in Australian currency unless stated otherwise on an Order.

4 LIMITED WARRANTY

- 4.1 Subject to the terms of this contract, the Seller warrants that the products will meet the specifications set out on the Order in all material respects on:

- (a) the date that the products were delivered to the Buyer; or
- (b) if the delivery address is not at the Buyer's address, the date that the Seller notified the Buyer that the products were ready for collection.

- 4.2 To the extent permitted by law, the Seller expressly excludes any warranty:

- (a) that the products meet any sample provided by the Seller;
- (b) that the products conform to any oral representation that is not reduced to writing and included on the Order, or any written representation (including any representation on a website or in a brochure) that is not included on the Order;
- (c) that the products can be used, or have particular characteristics when mixed with other products, in a particular way;
- (d) that the products comply with any particular law or standard, or have any particular certification, permit or approval, unless it is stated on the Order;
- (e) claim where the alleged failure in the Buyer's products cannot be reproduced in the Seller's batch sample from the production run that included the Buyer's products.

- 4.3 The Buyer warrants that:

- (a) it will apply for and maintain any and all licences, permits, certification and approvals and governmental authorisations in respect of the importation, use and re-sale or distribution of the products, unless stated otherwise on the Order;
- (b) it will comply with all applicable Federal, State and local laws, ordinances, regulations, rules and orders in performing its obligation under this contract;
- (c) it has used its own skill and judgment and relied on its own expertise in selecting and purchasing the products.

- 4.4 The Buyer must:

- (a) not give any person any guarantee, warranty, inducement or benefit nor make any representations on behalf of Seller;
- (b) not make any claim in respect of any product, including as to the quality, performance or manufacture of such product that is inconsistent with legal or regulatory requirements or that is false or misleading in any way;

- (c) co-operate fully with Seller's employees and other contractors and provide all assistance reasonably required by Seller from time to time;
- (d) comply with all reasonable directions from time to time given by Seller.

5 LIMITATION OF LIABILITY AND INDEMNITY

- 5.1 If the Seller is in breach of the warranty in Article 4.1 or any other warranty in respect of the products under this contract and an Order, and the Seller receives a Defect Notice of such failure in accordance with Article 2.5, the Seller will, at its option and cost, rectify the deficiency, resupply the defective products on that delivery or refund the amount paid for the deficient products on that delivery.
- 5.2 To the extent permitted by law and subject to Article 6.6, the remedies stated in Article 5.1 are the Buyer's sole remedy and the Seller's entire liability for breach of the corresponding warranties in Article 4.1 or any warranty required by law. To the extent permitted by law, all implied conditions, warranties and rights, together with any implied by custom or other circumstances, are excluded.
- 5.3 The Buyer must at all times indemnify and hold harmless the Seller, its officers, employees and agents (those indemnified) from and against any loss, damage, expense (including legal expenses on a full indemnity basis expenses) or liability incurred or suffered by any of those indemnified and all actions, proceedings, claims or demands made against those indemnified to the extent that they were caused directly or indirectly by:
 - (a) a breach by the Buyer of its obligations under this contract or any Order;
 - (b) any third party claim arising out of or in connection with the products;
 - (c) any willful, unlawful or negligent act or omission of the Buyer, its agents or contractors.
- 5.4 To the extent permitted by law, and subject to Articles 5.3, 5.5 and 5.6, the Seller's total liability to the Buyer for any and all claims, losses or damages arising out of, or in connection with, any cause, including without limitation any claim based in contract, negligence or other tort, strict liability, breach of warranty or otherwise shall:
 - (a) where the claim arises from a particular Order; in no event exceed the price of the products on the date of the Order in respect to which such claim arose;
 - (b) where the claim does not arise from a particular Order, in no event exceed the lesser of:
 - (i) amount paid for all Orders in the month immediately prior to the date that the claim first arose; or
 - (ii) \$25,000.
- 5.5 In no event shall the Seller be liable for any:
 - (a) special, incidental, indirect, consequential or exemplary losses, damages or expenses even if they, or the possibility of them, were known, or ought to have been known by the Seller;
 - (b) loss of profits, loss of revenue, loss of goodwill or loss of any other product

that is not supplied by the Seller.

- 5.6 Any cause of action that the Buyer may have against Seller which may arise under or in connection with this contract must be commenced within 1 year after the cause of action has accrued.

6 SAFETY AND HEALTH

- 6.1 The Seller may provide the Buyer with relevant safety data sheets, product batch numbers, other documents or information and/or provide warning labels as part of the packaging of any products, which include product identification details, warnings and/or safety and health information concerning the products and/or the packaging, storage or handling for such products (**Safety Advice**). The Buyer must not remove, deface or alter any notice containing Safety Advice unless the product to which the Safety Advice relates has been completely used up.
- 6.2 The Buyer must comply with the Safety Advice at all times and must maintain appropriate processes, resources and facilities to enable it to comply with the requirements in the Safety Advice at all times.
- 6.3 The Buyer must communicate such Safety Advice to all persons that the Buyer can reasonably foresee may be exposed to or may handle the products and their packaging, including without limitation the Buyer's employees, agents, contractors and customers. The Buyer must do all things reasonably necessary to ensure that those persons follow such Safety Advice.
- 6.4 The Seller and the Seller's agents may enter and inspect any premises controlled by the Buyer to audit the Buyer's compliance with this Article 6.
- 6.5 If any product becomes subject to a product recall from the Seller, then the Buyer must do all things required by the Seller to immediately prevent further sales of the product, identify all recalled products and any goods that includes any such product that are in the custody or control of the Buyer or any third party, and if requested in writing by the Seller, return or destroy the recalled products (and all goods that includes the recalled products) that are in its custody and control using the method/process/contractors directed by the Seller. The Seller shall reimburse the Buyer for the amount paid for the recalled products (including those recalled products that the Buyer has sold to third parties) and the cost of returning or destroying the recalled products and any of the Buyer's goods that include the recalled product. To the extent permitted by law, the payment of this amount will be the Buyer's sole remedy and the Seller's entire liability to the Buyer in respect of any claim arising from a product recall.

7 UNEXPECTED EVENTS

- 7.1 The Seller is not liable for any loss, damage or expense that arises from any non-performance or delay in performance in whole or in part caused by circumstances beyond its reasonable control, including without limitation, acts of God, fire, flood, war, explosion, breakdown or labour trouble; embargoes or other import or export restrictions; shortage or inability to obtain energy, equipment, transportation, product failure caused by the Seller's supply chain or delivery suppliers, or good faith compliance with any regulation, direction or request (whether valid or invalid) made by any governmental or body exercising any licensing, permit, certified or approval right.

8 INTELLECTUAL PROPERTY RIGHTS

- 8.1 The Buyer acknowledges and agrees that nothing contained or implied in this contract or an Order gives the Buyer ownership of or gives rise to any proprietary interest of Buyer in Seller's name, domain name, trademarks, trade names or any other intellectual property rights of Seller and its related bodies corporate, including without limitation any intellectual property rights in any products. The Buyer must not seek, or claim, any intellectual property rights, in any products, or any item or thing that is made using any of the product(s). The Buyer must promptly and fully disclose to the Seller any new invention, idea or other thing that is capable of being protected by any intellectual property right in any part of the world that relates to the product or any item or thing that is made from the product. The Buyer must assign or transfer all rights, title and interest in such invention, idea or thing to the Seller immediately upon demand, for a nominal cost.

9 CONFIDENTIALITY

- 9.1 For this contract, Confidential Information means all non-trivial information concerning, or held by, a party's business, including information marked as confidential, that the discloser treats as confidential or which the recipient knows or ought to know is confidential, but does not include information that:
- (a) is in the public domain (other than as a result of unauthorised disclosure);
 - (b) the recipient already possesses at the time of disclosure (unless the information was received through unauthorised disclosure or is subject to prior confidentiality obligations); or
 - (c) is independently developed or acquired by the recipient (except through unauthorised disclosure).
- 9.2 Each party agrees that it must not permit the use of the other party's Confidential Information by, nor must it disclose the other party's Confidential Information to, any third person, other than:
- (a) the Seller may disclose it to its related bodies corporate, and any of their respective employees, contractors and agents;
 - (b) either party may disclose it to their professional advisers,
- unless such use or disclosure is specifically authorised in writing by the other party or by law. Each party must only use the other's Confidential Information for the purpose of performing the obligations under this contract, or if the recipient is a professional adviser, the professional adviser may use the Confidential Information for purposes connected with advising on or reporting on the contract or any Order.
- 9.3 Each party must use any Personal Information (as defined by the *Privacy Act 1998* (Cth)) of which it becomes aware in connection with the contract in accordance with law, including the *Privacy Act 1998* (Cth) and all other privacy legislation. The Buyer warrants that it has obtained the informed consent from each person about whom the Seller obtains Personal Information in connection with this contract so that the Seller, its related bodies corporate, and their respective employees and contractors to be able to use, store, manipulate or otherwise deal with the Personal Information for any purpose connected with the contract and that such usage may include transferring the data overseas to any of the Seller's related bodies corporate or their contractors for any use, storage, manipulation or dealing for any purpose connected with the

contract.

10 TERMINATION

- 10.1 This contract and/or any Order may be terminated by Seller for any reason, without liability to the Buyer, at any time, by giving the Buyer 30 days written notice of termination.
- 10.2 In addition, Seller may, by written notice, immediately terminate this contract and/or any Order if:
- (a) the Buyer commits any breach of any provision of this contract or any Order and has failed to remedy such breach within 14 days of receipt of written notice requiring it to do so;
 - (b) the Buyer is placed in liquidation, in any type of insolvency or has any type of controller, receiver, manager or any external person or body take control of the Buyer or any of the Buyer's assets;
 - (c) the Buyer is unable to pay its debts as they fall due, or the Seller believes that the Buyer is unable to pay its debts as they fall due;
 - (d) a party ceases for any reason to be able to be lawfully able to carry out all the transactions which this contract contemplates may be carried out by it;
 - (e) a material provision of this contract or any Order that purports to impose an obligation on the Buyer is or becomes void, voidable, illegal or unenforceable or of limited force (other than because of equitable principles or laws affecting creditors rights generally);
 - (f) there is an effective change of control over the Buyer, including without limitation a change in the majority ownership of the voting shares, a change in the majority of the Board of Directors or any other arrangement which changes the effective control of the Buyer to operate its business;
 - (g) the Buyer sells or otherwise transfers control over a significant part of its business or assets;
 - (h) any event analogous to any of the events referred to in this Article happens in connection with the Buyer under the laws of any jurisdiction.
- 10.3 Upon the termination of this contract and/or any Order for any reason:
- (a) the obligations in respect of any Orders that have not been terminated shall continue unaffected by the termination of any other Orders or the contract;
 - (b) the Seller's obligation to supply the products under the Orders that have been terminated shall cease immediately;
 - (c) outstanding unpaid invoices rendered by Seller in respect of the products under all Orders must be paid immediately by the Buyer;
 - (d) invoices in respect of products delivered prior to termination but for which an invoice has not been provided must be paid immediately upon receipt of the invoice.

11 GENERAL

- 11.1 The Buyer warrants that it will not make any improper payments of money or improperly provide anything of value to a government official (whether appointed, elected, honorary, or a career government employee) in connection with this contract or any Order, nor shall it make improper payments to a third party knowing or suspecting that the third party will give the payment, or a portion of it, to a government official.
- 11.2 This contract and any Order must not be assigned in whole or in part by the Buyer or the Seller without the written consent of the other party, except that the Seller may assign, transfer or novate some or all of its obligations and liabilities under this contract or any Order to any person that is in the Seller's group of companies, without the Buyer's consent.
- 11.3 No waiver by either party of any breach of any of the terms and conditions shall be construed as a waiver of any succeeding breach of the same or any other term or condition. Any waiver must be in writing and signed by the party exercising the waiver.
- 11.4 This contract and any Order constitute the entire agreement between the parties in respect of the subject matter, and all oral and other representations, statements and warranties are excluded to the extent permitted by law.
- 11.5 This contract and any Order may only be modified by a written agreement signed by the parties or by a Variation Confirmation. The terms of the contract may only be varied by an Order, if the Order specifically states that the relevant Article in this contract is being modified. The terms of any Buyer's purchase order are expressly excluded from this contract and any Order. To the extent of any inconsistency between any Order and the terms and conditions in this contract, the terms and condition of this contract prevail.
- 11.6 If any provision of this contract or any Order offend any law applicable to it and as a consequence is illegal, invalid or unenforceable then:
- (a) where the offending provision can be read down so as to give it a valid and enforceable operation of a partial nature it must be read down to the extent necessary to achieve that result;
 - (b) in any other case, the offending provision must be severed from this contract in which event the remaining provisions of this contract or Order operate as if the severed provision had not been included.
- 11.7 Nothing in this contract or any Order may be construed as creating a relationship of partnership, of principal and agent or of trustee and beneficiary.
- 11.8 The contract and any Order may be signed in any number of counterparts, each of which shall be an original, and any one of which shall be deemed to be validly executed if evidenced by a facsimile copy of the executing party's signature with the same effect as if the signatures were on the same document.
- 11.9 Except as expressly provided otherwise in this contract, the parties' rights and remedies under this contract are cumulative and there is no obligation to exercise a particular remedy. If a party is in breach of this contract or any Order, the non-breaching party may avail itself of all other rights, remedies and causes of action available at law, in equity or otherwise.

- 11.10 No provision of the contract or any Order shall be deemed waived, by a party, unless the waiver is in writing and signed by the party giving the waiver.
- 11.11 Any notice that is to be given under the contract must be in English, in writing and signed by the person giving the notice. Any notice must be hand delivered to the address, sent by prepaid post to the address or sent to the facsimile number of the recipient as set out in Order. Each party must promptly notify the other of any change of address or contact details, and such details shall be incorporated into the contract from the date following the date of receipt.
- 11.12 Any notice sent in accordance with the contract is deemed to have been received:
- (a) if hand delivered; on the date of delivery;
 - (b) if posted within Australia; 3 business days after the date of posting;
 - (c) if posted by airmail internationally; 7 business days (calculated in the place of sending) after the date of posting;
 - (d) if sent by facsimile; at the time set out on a transmission report from the machine from which the facsimile was sent which states that the facsimile was sent in its entirety to the facsimile number of the recipient, provided that that time is before 4.00 pm on a business day in the place of receipt, if the time is later than that the facsimile will be deemed received on the next business day in the place of receipt.
- 11.13 The contract and all Orders are governed by the laws of NSW, Australia. The parties submit to the exclusive jurisdiction of the courts of NSW, Australia and any courts competent to hear appeals from those courts.



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