

# TRAJAN SCIENTIFIC AUSTRALIA PTY LTD STANDARD TERMS AND CONDITIONS

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## 1. Definitions, Formation and Scope of the Contract

### 1.1. In this document:

**Contract** means any agreement for the sale of Goods entered into between Trajan and the Purchaser.

**Goods** means items or services sold or supplied by Trajan.

**GST** means the goods and services tax imposed by *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

**Order** shall include any acceptance by the Purchaser of a tender, quotation or offer made by Trajan.

**Personal Information** means information that can be used to directly or indirectly identify an individual.

**Purchaser** means any person who acquires or agrees to acquire Goods from Trajan and any successor in title to those Goods.

**Terms and Conditions** means these terms and conditions of sale.

**Trajan** means Trajan Scientific Australia Pty Ltd, ACN 161 314 969, together with its agents, servants and employees.

1.2. Unless there is express written agreement to the contrary, Trajan contracts upon terms that any contract is subject to the Terms and Conditions. Any Order placed by the Purchaser shall be conclusively deemed to have been made subject to the Terms and Conditions in force as at the date the Order is received by Trajan, irrespective of any contrary terms printed on or accompanying the Purchaser's order documentation, and such contrary terms shall in no circumstance prevail.

1.3. A reference in these Terms and Conditions to a provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

## 2. Confirmation of Orders

No Order placed by the Purchaser shall be binding on Trajan unless and until Trajan accepts the Order. Acceptance of any Order may be made by Trajan taking any steps to satisfy the Order. Any Order which has been accepted by Trajan may not be cancelled by the Purchaser except with the agreement in writing of Trajan and, in such circumstances, only on the basis that the Purchaser shall indemnify Trajan in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Trajan as a result of such cancellation.

## 3. Price

3.1. All Orders will be invoiced at the prices in effect at the time of delivery of the Goods.

### 3.2. Goods and Services Tax

#### a) Interpretation

Words or expressions used in this clause 3.2 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* have the same meaning in this clause.

#### b) GST inclusive amounts

For the purposes of these Terms and Conditions where the expression 'GST inclusive' is used in relation to a price, an amount payable or other consideration to be provided for a supply under these Terms and Conditions, the amount or consideration will not be increased on account of any GST payable on that supply.

#### c) Consideration is GST exclusive

Any consideration to be paid or provided to Trajan for a supply made by Trajan under or in connection with these Terms and Conditions unless specifically described in these Terms and Conditions as 'GST Inclusive', does not include an amount on account of GST.

#### d) Gross up of consideration

Despite any other provision in these Terms and Conditions, if Trajan makes a supply under or in connection with these Terms and Conditions on which GST is imposed (not being a supply the consideration for which is specifically described in these Terms and Conditions as 'GST inclusive'):

- i. the consideration payable or to be provided for that supply under these Terms and Conditions but for the application of this clause ('GST' exclusive consideration') is increased by, and the Purchaser must also pay to Trajan an amount equal to the GST payable by Trajan on that supply; and
- ii. the amount by which the GST exclusive consideration is increased must be paid to Trajan by the Purchaser without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

#### e) Reimbursements (net down)

If a payment to a party under these Terms and Conditions is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

#### f) Purchaser Warranty and Indemnity

The Purchaser warrants that where GST is imposed on a supply made by Trajan under or in connection with these Terms and Conditions and the consideration for that supply was not increased under this clause 3.2 as the parties mistakenly regarded the supply as GST-free, the Purchaser will indemnify Trajan for and in respect of the GST (including any interest or penalty) imposed on or in respect of that supply.

## 4. Payment and Default

4.1. Unless otherwise expressly agreed in writing, the purchase price shall be paid to Trajan in full without deduction in the currency specified in the invoice strictly thirty (30) days from the date of the invoice for the Goods.

4.2. Where the purchase price is not paid in full on the due date Trajan has the right to charge interest on the balance outstanding, calculated from the due date until the date of payment at a rate 5% higher than the rate of interest charged by Trajan's bankers on Trajan's overdraft from time to time. Such interest shall accrue from day to day on the amount of the purchase price remaining unpaid up to the date of payment and shall be payable on demand.

4.3. The Purchaser shall indemnify Trajan against all costs and disbursements which Trajan may incur in recovering any sums due to be paid by the Purchaser to Trajan under any Contract, including but not limited to any debt recovery agency fees, court fees or legal fees.

4.4. Trajan has the right to cancel the remainder of the Contract or to suspend deliveries of Goods if the Purchaser does not strictly observe the terms of payment. Trajan also has

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the right to sell or otherwise dispose of Goods that are the subject of the contract and to apply the proceeds of any such sale to the overdue account.

4.5. Payment of the purchase price shall become immediately due if:

- a) the Purchaser makes default in any payments or is unable or states that it is unable to pay its debts as and when they fall due;
- b) the Purchaser, being an individual, commits an act of bankruptcy or has a controller or trustee appointed in respect of the Purchaser's estate or any part of the Purchaser's property or assets;
- c) the Purchaser, being a company, passes a resolution for its winding up or enters into liquidation or has an application for winding up filed against it;
- d) a receiver, receiver and manager, controller or voluntary administrator is appointed over any part of the property or assets of the Purchaser;
- e) Trajan reasonably apprehends that any of the events mentioned above is about to occur in relation to the Purchaser; or
- f) the Purchaser experiences any analogous event having substantially similar effect to any of the events specified above.

### 5. Delivery Times

5.1. Subject to clause 5.2, Trajan will use reasonable endeavours to achieve any delivery times stated by Trajan.

5.2. Times stated by Trajan for delivery are estimates only. Trajan does not guarantee that the delivery of the Goods will be within the delivery times stated by Trajan and no liability shall attach to Trajan in the event of delivery being delayed by any circumstances, including circumstances beyond Trajan's control. In no circumstances shall delay amount to, or be deemed to be, a breach of the Contract and the Purchaser shall not be entitled to treat the Contract as repudiated by reason of any delay in delivery.

### 6. Delivery and Risk

6.1. Unless expressly agreed otherwise by Trajan, and subject to clause 6.2, all Goods sold to Purchaser are delivered on the basis that Trajan is responsible for arranging transportation and insurance from Trajan's premises to the Purchaser. Risk in such Goods shall pass to the Purchaser upon the loading of the Goods on the carrier.

6.2. Trajan may invoice the Purchaser for the costs of freight and insurance of Goods up to the time of delivery to the Purchaser. The Purchaser is responsible for all local taxes and for any customs or import duties payable for Goods sold outside Australia.

### 7. Title to Goods

7.1. Irrespective of the time when risk in the Goods shall pass, property in the Goods shall remain with Trajan until the Purchaser has made payment in full to Trajan of the purchase price and any other indebtedness of the Purchaser to Trajan.

7.2. The Purchaser acknowledges that until payment of the purchase price is made in full, the Purchaser holds the Goods in a fiduciary capacity on behalf of Trajan.

### 8. Purchaser's Representations and Acknowledgments

8.1. The Purchaser acknowledges that it is responsible for informing Trajan in writing of all requirements the Purchaser has relating to the use of the Goods in the

country or state of intended use, including, but not limited to, all statutory or other like requirements relating to marking, labelling and/or packaging.

8.2. The Purchaser warrants that it has not advised Trajan of any particular purpose for which it requires the Goods, save for any purpose stated by the Purchaser to Trajan in writing.

8.3. Any failure by the Purchaser to inform Trajan in writing of any of the matters referred to in clauses 8.1 and 8.2 shall not entitle the Purchaser to refuse to accept the Goods or pay the purchase price, nor shall Trajan be liable in any way whatsoever if the Goods fail to comply with any requirements not disclosed in writing to Trajan by the Purchaser prior to the formation of the Contract. The Purchaser indemnifies Trajan in full against any loss or damage suffered by Trajan howsoever arising out of any failure to comply with any requirements not disclosed in writing to Trajan by the Purchaser prior to the formation of the Contract.

8.4. The Purchaser acknowledges that:

- a) it has selected the Goods from a range of products offered by Trajan and the Purchaser has satisfied itself that the Goods meet the Purchaser's requirements;
- b) no oral or written information, representation or advice given by or on behalf of Trajan, other than as contained in the Terms and Conditions, creates a warranty or in any way increases the scope of the Terms and Conditions; and
- c) unless expressly agreed otherwise in writing, the Purchaser has not relied on any information, representation or advice given by or on behalf of Trajan in selecting the Goods; and
- d) Trajan makes no representation that its Goods conform to country, state or local laws, ordinances, regulations, codes or standards (except as may otherwise be agreed to in writing by Trajan) and the Purchaser is responsible for complying with all local laws relating to the use of the Goods at its own cost and expense.

### 9. Use of Goods & Recall

9.1. Purchaser as end-user

Where the Purchaser is an end-user of the Goods, it warrants that it will use the Goods in conformity with:

- a) laboratory practices that are consistent with industry practice;
- b) any instructions or guidelines attached to the Goods or issued by Trajan from time to time;
- c) all applicable laws and regulations, guidelines and decisions of judicial or regulatory bodies; and
- d) any patent or other proprietary rights of third parties.

9.2. Purchaser as distributor

Where the Purchaser is a distributor of the Goods, it warrants that it will use its best efforts to procure that the end user(s) of the Goods will use the Goods in conformity with paragraphs 9.1 (a) to (d) above, and will in any event inform any end user in writing of the above requirements for the use of the Goods.

9.3. The Purchaser must keep Trajan informed of all Customer complaints concerning the Goods and must comply with any directions of Trajan in any issues, proceedings or negotiations relating to such complaints. Trajan may at its discretion recall any Goods already sold to the Purchaser (whether for a refund, credit or replacement of the Goods)

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and the Purchaser must comply with any notice issued by Trajan for such recall.

## 10. Product Warranty

- 10.1. Trajan warrants that, subject to clause 10.3, Goods manufactured by Trajan will be free from defects caused by manufacture for a period of 45 days from the date of shipment by Trajan. Should any fault occur within that period as the result of such defect, Trajan will replace the Goods at no charge to the Purchaser except for delivery.
- 10.2. To the fullest extent permitted by the *Competition and Consumer Act (Cth) 2010* and any other legislation relevant to the sale and supply of Goods by Trajan to the Purchaser, in the case of Goods not manufactured by Trajan, Trajan's warranty in clause 10.1 shall be limited to the warranties implied by law and any further warranty contained in any manufacturer's warranty for those Goods.
- 10.3. The warranty contained in clause 10.1 shall not apply in the following circumstances:
- in respect of loss or damage caused by the use of the Goods other than strictly in accordance with the terms of use of the Goods, including without limitation loss or damage caused as a result of a failure to use the Goods in accordance with Trajan's instructions, or caused by rough or negligent handling of the Goods;
  - in respect of loss or damage for Goods that are not stored or shipped in accordance with Trajan's storage and shipping instructions;
  - in respect of loss or damage caused by an act of God or any other cause not within Trajan's control or otherwise not related to the Goods.
- 10.4. To the fullest extent permitted by the *Competition and Consumer Act (Cth) 2010* and any other legislation relevant to the sale and supply of the Goods by Trajan to the Purchaser, Trajan's liability for breach of a condition or warranty implied by such Acts, including any incidental or consequential loss which the Purchaser may sustain or incur shall be limited to one of the following, at the sole discretion of Trajan:
- replacement of the Goods; or
  - payment of the cost of replacing the Goods or acquiring equivalent Goods.
- 10.5. Trajan shall not be liable (whether for breach of the Terms and Conditions, negligence or otherwise) for loss of profits or special, consequential or indirect loss or damage.
- 10.6. Save for the express conditions and warranties herein contained all other conditions and warranties (whether as to the quality, fitness for purpose or any other matter) expressed or implied by statute, the common law, equity, trade custom, usage or otherwise are hereby expressly excluded provided that nothing in these Terms and Conditions shall exclude or limit the liability of any breach of a term or condition implied by law, the exclusion or limitation of which is not permitted by law.
- 10.7. Goods returned under warranty for testing will incur a charge, to be fixed by Trajan, if no fault is found.
- 10.8. The Purchaser shall bear any cost of delivery and insurance of any Goods so returned under warranty.
- 10.9. Where Goods are returned under warranty or where the Purchaser has advised Trajan in writing that the Goods are faulty but has not as yet returned the Goods, Trajan may, at its sole discretion and subject to clause 10.10, provide to the Purchaser a replacement item with specifications that are not less than those of the Goods returned or to be returned.

- 10.10. Trajan shall be entitled to invoice the Purchaser in respect of a replacement item provided to the Purchaser in accordance with clause 10.9 at the full price of that replacement item if the Goods to be returned by the Purchaser are not received by Trajan within 30 days of the dispatch of the replacement item.

## 11. Claims

- 11.1. No claims will be recognised in respect of any mistake or shortage or over supply of Goods after seven (7) days from the invoice date.
- 11.2. Unless otherwise expressly agreed in writing, Trajan shall not accept any conditions providing for the payment by Trajan of liquidated damages or other penalties for delayed delivery of Goods or provision of information or for any other reason whatsoever.

## 12. Return of products

Goods are not supplied on a sale or return basis. At Trajan's sole discretion, Trajan may accept the return of Goods supplied, subject to the following conditions:

- Goods marked 'non returnable' are non returnable;
- Goods must be returned to Trajan or a nominated agent in good order and condition, be resaleable and be returned within seven (7) days of the date of the invoice;
- before returning Goods the Purchaser must first obtain a Return Authorisation Number (RAN) from Trajan;
- when returning Goods the Purchaser shall quote the invoice number, RAN and date;
- the Purchaser shall pay freight charges to return the Goods to the place of business of Trajan;
- the Purchaser shall pay a restocking fee of an amount determined by Trajan at its sole discretion for handling; and
- subject to the provision of clause 10.1 the return of Goods for credit will not be accepted except upon prior written agreement from Trajan

## 13. Intellectual Property Rights

The Purchaser acknowledges Trajan's licence to use or ownership of the patents, trade marks, designs and any other intellectual property rights contained within the Goods manufactured or supplied by Trajan and in particular agrees that neither the Purchaser, nor its servants or agents, will attempt to do anything with any of Trajan's intellectual property rights which will render the Purchaser liable to Trajan for violation or infringement of its intellectual property rights.

## 14. Indemnity

The Purchaser indemnifies and holds Trajan harmless from and against any and all losses, costs and expenses of Trajan, including legal fees and expenses, in any way relating to:

- any use of Goods not in compliance with these Terms and Conditions;
- any failure by Purchaser to comply with laboratory practices that are consistent with industry practice, laws, guidelines or decisions in the handling or use of the Goods;
- any violation or infringement of any patent or other proprietary rights of third parties by the Purchaser in the handling or use of the Goods; or

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- d) any other use or misuse of the Goods by the Purchaser.

## 15. Modifications to Goods

15.1. Where the Purchaser provides information and / or instructions in writing to Trajan and where Trajan makes any modifications, alterations or adjustments to any Goods as a result of or in reliance upon the information or instructions provided by the Purchaser, the Purchaser indemnifies Trajan in full against any loss or damage suffered by Trajan howsoever arising out of any reliance by Trajan on the information or instructions provided by the Purchaser.

15.2. Where the Purchaser provides information and / or instructions to Trajan on which modifications, alterations or amendments to the Goods are made, the Purchaser indemnifies Trajan in full against any loss or damage suffered by Trajan where any such modifications, alterations or amendments are challenged by a third party as being in breach of that third party's intellectual property rights.

## 16. Privacy and Data Protection

In relation to any Personal Information which is obtained by Trajan in connection with its supply of the Goods to the Purchaser, Trajan will collect, process, use and store that Personal Information in accordance with Trajan's Privacy and Security Policy published on the Trajan website, as may be amended from time to time.

## 17. General

### 17.1. No Waiver

Failure by Trajan to insist upon strict performance of any term, warranty or condition of this Contract shall not be deemed a waiver of any term, warranty or condition, or of any rights Trajan may have and no express waiver shall be deemed a waiver of any subsequent breach of any term, warranty or condition.

### 17.2. Severance

If any provisions of these Terms and Conditions shall become void or unenforceable for any reason, such void or unenforceable provisions or part thereof shall be deleted and the remaining provisions shall continue in full force and effect.

### 17.3. Assignment

The Purchaser shall not be entitled to assign any of its rights or obligations under this Contract without the prior consent of Trajan.

### 17.4. Notices

Any notice to be served in respect of the Contract shall be made in writing and either delivered personally or sent by registered post to the latest notified address of the other party and shall be deemed served upon delivery where delivered personally or when recorded by the delivery agent if sent by registered post.

### 17.5. Force majeure

a) Trajan will not be liable for any failure to perform because of strikes, differences with workmen, accidents, fire, floods or shutdowns of manufacturing plant or plants supplying it, order or requirements of the Australian Government, embargoes, inability to secure transportation facilities, or other contingencies beyond the control of Trajan, including those arising out of or due to national defence activities, or emergency conditions.

Customer's performance, except for the obligation to pay any amounts due and owing or becoming due and owing hereunder, shall likewise be suspended in the event that the Force Majeure events set forth herein actually and totally prevent taking delivery of the Products.

- b) Upon giving written notice to the other party, a party affected by an event of Force Majeure shall be released without any liability on its part from the performance of its obligations under these Terms and Conditions of Sale, except for the obligation to pay any amounts due and owing or becoming due and owing hereunder, but only to the extent and only for the period that its performance of such obligations is prevented by the event of Force Majeure. Such notice shall include a description of the nature of the event of Force Majeure, its cause and possible consequences. The party claiming Force Majeure shall promptly notify the other party of the termination of such event. During the period that the performance by one of the parties has been suspended by reason of an event of Force Majeure, the other party may likewise suspend the performance of all or part of its obligations hereunder to the extent that such suspension is commercially reasonable.

## 18. Governing Law

Any Contract between Trajan and the Purchaser shall be subject to the laws of the State of Victoria, Australia and the parties submit to the exclusive jurisdiction of the Courts of the State of Victoria, Australia.