

Credit Application Form

Please print and complete in full. Submit completed form to Customer Service by FAX or EMAIL:

FAX: 1300 665 886 (AUS) | 09 447 1685 (NZ)

EMAIL: info@therapyspecialties.com.au (AUS) | info@therapyspecialties.co.nz (NZ)

Business Details

FULL BUSINESS NAME:

NATURE OF BUSINESS:

ABN/GST:

PHONE:

PRACTICE ESTABLISHED:

YEARS: MONTHS:

PERIOD AT CURRENT LOCATION:

YEARS: MONTHS:

POSTAL ADDRESS:

DELIVERY ADDRESS (IF DIFFERENT FROM POSTAL):

TRADING NAME (IF DIFFERENT):

TYPE OF BUSINESS:

EMAIL ADDRESS:

FAX:

MONTHLY CREDIT LIMIT:

Contacts

PRACTITIONER (CONTACT):

ACCOUNTS (CONTACT):

PHONE:

PHONE:

Partners/Directors

FULL NAMES:

1.

2.

PRIVATE ADDRESSES:

Trade References (TWO REFERENCES REQUIRED)

NAMES:

ADDRESSES:

PHONE NO:

1.

2.

I have read and accept the Terms and Conditions. (See attached)

Name: _____ Signature: _____

Date: _____

terms and conditions of sale

1. Definitions and interpretation

- 1.1 "Act of God" means any act of nature (including, fire, flood,earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, government sanction, blockage, embargo, labour dispute, strike, lockout or interruption or failure of electricity or a telecommunications service and any other similar act which is beyond the reasonable control of a party.
- 1.2 "Business Day" means Monday to Friday 9am to 5pm except public holidays.
- 1.3 "Buyer" shall mean the person who orders or purchases any Goods or Services from the Seller
- 1.4 "Free Into Store" means that in addition to freight and insurance, the Seller is responsible for the cost of all entry costs for delivery of the Goods, including import duty, unloading, inland freight, brokers fees and custom houses fees.
- 1.5 "Goods" shall mean goods supplied by the Seller to the Buyer.
- 1.6 "Guarantor" means the person (or persons), or entity who agrees to be liable for the obligations of the Buyer as guarantor.
- 1.7 "Price" shall mean the price of the Goods and Services as agreed between the Seller and the Buyer subject to clause 4 of this Agreement.
- 1.8 "Seller" shall mean Surgical Specialties Pty Ltd ABN 87 116 881 595 and Therapy Specialties Pty Ltd ABN 74 114 633 706.
- 1.9 "Services" shall mean all services supplied by the Seller to the Buyer and includes any advice or recommendations.
- 1.10 "this Agreement" means the agreement between the Seller and the Buyer on the terms of this document
- 1.11 In the interpretation of this Agreement unless the contrary intention appears:
 - (a) the words "includes" or "including" will not be limited to whatever follows;
 - (b) a reference to a person includes a reference to a corporation firm association or other entity, and vice versa; the singular includes the plural and vice versa; a reference to any gender includes a reference to all other genders;
 - (c) a reference to any legislation includes a reference to any modification or re-enactment;
 - (d) an obligation upon two or more persons is borne by them jointly and severally; and
 - (e) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning.

2. Acceptance

- 2.1 Without limiting the way in which the Buyer may become bound by this Agreement, the Buyer will become bound by this Agreement by placing an order with the Seller for the supply of Goods or Services or by the Buyer signing a copy of this Agreement.
- 2.2 Where more than one Buyer has entered into this agreement, the Buyers shall be jointly and severally liable for their obligations under this Agreement.
- 2.3 None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by a senior manager of the Seller in writing nor is the Seller bound by any such unauthorised statements.
- 2.4 The Buyer undertakes to give the Seller not less than fourteen (14) days advance written notice of any proposed change in the Buyer's name and/or any other change in the Buyer's details (including but not limited to, changes in the Buyer's address, facsimile number, or business practice).

3. Ordered Goods

- 3.1 The Goods and Services to be supplied by the Seller are as described on the invoices, quotation, work authorisation or any other work commencement forms as provided by the Seller to the Buyer.
- 3.2 The Seller may in its sole discretion refuse to supply part or all of any order of Goods placed by the Buyer.
- 3.3 Orders can only be supplied in multiples of the "minimum order" quantity shown in the Seller's price list. Orders which fail to meet the minimum order value specified by Seller from time to time will be subject to the Seller's then current handling fee. Deliveries over the minimum order value will be made Free Into Store in designated major centres.
- 3.4 Export orders which fail to meet the minimum export order value specified by the Seller from time to time will be subject to the Seller's then current administration fee.

4. Price And Payment

- 4.1 At the Seller's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by the Seller to the Buyer in respect of Goods or Services supplied; or
 - (b) the Seller's current Price, at the date of delivery of the Goods or Services, according to the Seller's current Price list; or
 - (c) Seller's quoted Price (subject to clause 4.2) which shall be binding upon the Seller provided that the Buyer shall accept in writing the Seller's quotation within thirty (30) days.
- 4.2 The Seller may by written notice to the Buyer at any time up to thirty (30)days before delivery increase the Price of the Goods or Services to reflect any increase in the cost to the Seller beyond the reasonable control of the Seller (including, without limitation, foreign exchange fluctuations, taxes and duties and the cost of labour, materials and other manufacturing costs). The Buyer will have 3 Business Days from the receipt of such notice to cancel the order for the Goods or Services by written notice to the Seller. If the Buyer fails to provide such cancellation notice then the Buyer is deemed to have accepted the Price increase.
- 4.3 Time for payment for the Goods and Services shall be of the essence and will be stated on the invoice, quotation or in any other order forms. If any credit is granted by the Seller then payment will be as specified in the terms of the grant of credit. If no time is stated then payment shall be on delivery of the Goods or Services. If any of the forgoing may impose more than one due date for a payment on the Buyer, then the earliest due date will prevail.
- 4.4 The Seller may in its discretion withhold delivery of the Goods or Services until the Buyer has paid for them, in which event payment shall be made before the delivery date.
- 4.5 At the Seller's sole discretion, payment may be due at date of agreement. Unless otherwise agreed

standard payment terms are 30 days on invoice.

- 4.6 Payment will be made by cheque, bank cheque, E.F.T, or credit card subject to a 1% surcharge for payments greater than \$1,000) or by any other method as agreed to between the Buyer and the Seller. Unless specified to the contrary on any quote, invoice or order form, the Price shall be deemed to be exclusive of any GST and any other taxes, duties, levies, withholdings, government ordinances and related fines, penalties or interest payable by Seller in respect of the supply of the Goods or Services ("Taxes"). The Buyer will indemnify the Seller in respect of such Taxes and will at the same time as paying the Price to the Seller, pay the Seller the amount of such Taxes.
- 4.7

5. Delivery Of Goods / Services

- 5.1 Delivery of the Goods shall be made to the Buyer's address as indicated by the Buyer to Seller at the time of placing the order for the Goods. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. If the Buyer fails to make such arrangements then, at the Seller's discretion, delivery of the Goods shall be made to the Buyer at the Seller's address.
- 5.2 Delivery of the Goods to a carrier, either named by the Buyer or failing such naming to a carrier at the discretion of the Seller for the purpose of transmission to the Buyer, is deemed to be a delivery of the Goods to the Buyer.
- 5.3 The Seller may deliver the Goods and Services by separate installments (in accordance with the agreed delivery schedule). Each separate installment shall be invoiced and paid for in accordance with the provisions of this Agreement.
- 5.4 Delivery of the Goods or Services to a third party nominated by the Buyer is deemed to be delivery to the Buyer for the purposes of this Agreement.
- 5.5 The failure of the Seller to deliver shall not entitle either party to treat this Agreement as repudiated by the Seller.
- 5.6 The Seller shall not be liable for any loss or damage whatsoever due to failure by the Seller to deliver the Goods or Services (or any of them) promptly or at all.
- 5.7 The Buyer shall be responsible for insuring the Goods whilst they are in transit from the Seller to the Buyer until the time that the Seller delivers the Goods to the Buyer as determined under this clause.
- 5.8 Delivery and provision of any Services will take place on dates and times separately agreed between the parties.

6. Risk

- 6.1 All risk for the Goods passes to the Buyer on delivery as determined under clause 5.
- 6.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Buyer (as determined under clause 12), the Seller is entitled, without prejudice to any of its other rights or remedies under this Agreement (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable for the Goods. This applies whether or not the Price has become payable under this Agreement. The production of this Agreement by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

7. Liability and representations

- 7.1 The Buyer acknowledges that it has undertaken its own inspections and made its own independent enquiries in reaching its decision to purchase the Goods and/or Services.
- 7.2 The Buyer agrees that it will not make any representations about the Goods, Services or the Seller to the Buyer's customers or any other third party without obtaining the prior written consent of the Seller.
- 7.3 The Buyer acknowledges that the Seller has not made and will not make any express or implied warranties in relation to the Goods, Services or other Goods or services provided under this Agreement other than those contained in this Agreement. Subject to clauses 7.6 and 7.7 any term that would be implied into this Agreement, including without limitation any condition or warranty, is hereby excluded.
- 7.4 The Buyer agrees that the Seller shall not be liable in respect of any claim by the Buyer (whether contractual, tortious, statutory or otherwise) for any special, incidental, indirect or consequential damages or injury including, but not limited to, any loss of profits, contracts, revenue or data arising out of or in connection with the provision of the Goods, Services and/or any other goods or services under this Agreement and whether as a result of any breach, default, negligence or otherwise by the Seller.
- 7.5 Subject to clauses 7.6 and 7.7, the maximum liability of the Buyer for any and all breaches of this Agreement will be capped at the amount of the Price previously paid by the Buyer to the Seller under this Agreement.
- 7.6 In the event that the Trade Practices Act 1974 (Cth) (or analogous legislation) applies to this Agreement and permits the limitation of liability for breach of warranty implied by statute into this Agreement, the liability of the Seller is limited, at the option of the Seller, to:
 - (a) in the case of goods (including the Goods), any one or more of the following: (i) the replacement of the goods or the supply of equivalent goods (ii) the repair of the goods; (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; and (iv) the payment of the cost of having the goods repaired.
 - (b) in the case of services (including the Services):
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.
- 7.7 Any of the terms and conditions contained herein which limit or exclude any term, condition or warranty, express or implied, or the liability of the Seller shall apply to the extent permitted by law and shall not be construed as excluding, qualifying or limiting the Buyer's statutory rights or remedies arising by virtue of the breach of any implied term of this Agreement where such exclusion, qualification or limitation would be prohibited by statute.

8. Defects / Returns

- 8.1 The Buyer shall inspect the Goods on delivery and shall within seven (7) days of delivery notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Buyer believes the Goods are defective in any way. If the Buyer shall fail to comply with these provisions, the Goods shall be conclusively presumed to be delivered in accordance with this Agreement and free from any defect or damage.

- 8.2 For defective Goods, which the Seller has agreed in writing that the Buyer is entitled to reject, the Seller's liability, in addition to any limitation under clause 7, is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods provided that:
 - (a) the Buyer has complied with the provisions of clause 8.1;
 - (b) the Goods are returned in accordance with procedures specified by the Seller from time to time;
 - (c) the Seller will not be liable for Goods which have not been stored or used in a proper manner; and
 - (d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 8.3 The Seller may (in its discretion) accept or reject the Goods for a credit or return. Any credit or return agreed to by the Seller may incur a restocking fee of \$50 or 15% of the value of the returned Goods (whichever is the greater) plus any freight. The Seller may (without limiting its discretion) refuse to return or credit Goods which are made to a special order, Buyer specification or Goods which are non-catalogue items.

9. Warranty

- 9.1 Subject to the conditions of warranty set out in clause 9.2, the Seller warrants that if any defect in any workmanship of the Seller becomes apparent and is reported to the Seller within the warranty period as stipulated by the Seller at the time of sale then the Seller will either (at the Seller's sole discretion) repair the defect or remedy the workmanship.
- 9.2 The conditions applicable to the warranty given by clause 9.1 are:
 - (a) The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Buyer to properly maintain any Goods;
 - (ii) failure on the part of the Buyer to follow any instructions or guidelines provided by the Seller in respect of the Goods;
 - (iii) any use of any Goods otherwise than for any application specified on a quote or order form or as specified by the Seller from time to time;
 - (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user;
 - (v) fair wear and tear, any accident or Act of God.
 - (b) The warranty shall cease and the Seller shall thereafter in no circumstances be liable under the terms of the warranty if the Goods are repaired, altered or overhauled by the Buyer without the Seller's written consent.
 - (c) In respect of all warranty claims the Seller shall not be liable to compensate the Buyer for any delay in either replacing or repairing the workmanship/Goods or in properly assessing the Buyer's claim.
- 9.3 For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller shall not be bound by nor responsible for any term, condition, representation or warranty given by the manufacturer of the Goods.

10. Intellectual Property

- 10.1 Where the Seller has designed or drawn Goods for the Buyer, then the copyright, design rights, patent rights and all other intellectual property rights of any kind whatsoever in those designs and drawings shall remain vested in the Seller, and shall only be used by the Buyer at the Seller's discretion and in accordance with terms specified by the Seller.
- 10.2 The Buyer warrants that all designs or instructions provided by it to the Seller will not cause the Seller to infringe any copyright, patent, registered design or trademark in the execution of the Buyer's order.

11. Default and Consequences Of Default

- 11.1 Interest on overdue amounts shall accrue daily from the date when payment becomes due until the date of payment at a rate of 3% compounding per calendar month. To may be applied at sellers discretion.
- 11.2 If the Buyer defaults in payment of any amounts when due, the Buyer shall indemnify the Seller from and against all of the Seller's costs and disbursements arising from such default including legal costs on a solicitor and own client basis and in addition all of the Seller's nominees costs of collection.
- 11.3 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods and Services to the Buyer and any of its other obligations under this Agreement. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.
- 11.4 If any account remains unpaid at the end of the second month after supply of the Goods or Services an immediate amount of the greater of \$20.00 or 10.00% of the amount overdue shall be levied on the Buyer for administration fees which sum shall become immediately due and payable.
- 11.5 In the event that:
 - (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due; or
 - (b) the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, administrator, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer, then without prejudice to the Seller's other remedies at law:
 - (i) the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies; and
 - (ii) all amounts owing to the Seller shall, whether or not due for payment, immediately become payable in addition to the interest payable under clause 11.1 hereof.

12. Title

- 12.1 Property in the Goods shall not pass from the Seller to the Buyer until:
 - (a) the Buyer has paid to the Seller all amounts owing for the particular Goods under this Agreement; and
 - (b) the Buyer has met all other obligations due by the Buyer to the Seller in respect of all agreements between the Seller and the Buyer, and that where practicable the Goods shall be kept separate

- 12.2 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's ownership of rights in respect of the Goods shall continue.
- 12.3 It is further agreed that until such time as property in the Goods shall pass from the Seller to the Buyer:
 - (a) The Seller may give notice in writing to the Buyer to return the Goods or any of them to the Seller. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease.
 - (b) The Seller shall have the right of stopping the Goods in transit.
 - (c) If the Buyer fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Buyer, or any premises as the invitee and licensee of the Buyer, where the Goods are situated and take possession of the Goods.
 - (d) The Buyer is only a bailee of the Goods and until such time as the Seller has received payment in full for the Goods then the Buyer shall hold any proceeds from its sale or disposal of the Goods on trust for the Seller.
 - (e) The Buyer shall not deal with any money of the Seller in its possession in any way which may be adverse to the Seller.
 - (f) The Buyer shall not encumber or charge the Goods in any way or grant or otherwise give any interest in the Goods while they remain the property of the Seller.
 - (g) The Seller may issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Buyer.
 - (h) Until such time that ownership in the Goods passes to the Buyer, if the Goods are converted or made part of any end product, the parties agree that the Seller will be the owner of the end product.

13. Unpaid Seller's Rights To Dispose Of Goods

- 13.1 In the event that:
 - (a) the Seller retains or regains possession or control of the Goods; and
 - (b) payment of the Price is due to the Seller; and
 - (c) the Seller has made demand in writing of the Buyer for payment of the Price in terms of this Agreement; and
 - (d) the Seller has not received the Price of the Goods, then, irrespective of whether the property in the Goods has passed to the Buyer or has remained with the Seller, the Seller may dispose of the Goods and may claim from the Buyer the loss to the Seller on such disposal.

14. Cancellation

The Seller may terminate this Agreement or cancel delivery of Goods to the Buyer at any time before the Goods are delivered by giving written notice. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.

15. Guarantee

The Buyer agrees to procure that the Guarantor(s) specified by the Seller provide a guarantee and indemnity in favour of the Seller, for the purposes of securing performance of the Buyer's obligations hereunder on such terms as are specified by the Seller.

16. Credit reporting

The Buyer agrees to sign, and to procure any Guarantor(s) to sign, any consents or other forms required by the Seller under which it will consent, amongst other things, to the Seller obtaining credit information about the Buyer or Guarantor(s), providing a credit report in relation to the Buyer or Guarantor(s) or exchanging credit information about the Buyer or Guarantor(s) to third parties.

17. General

- 17.1 If any provision of this Agreement is found to be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 17.2 This Agreement shall be governed by the laws of the State of Victoria and the parties consent to the jurisdiction of the Courts of the State of Victoria and their Courts of appeal.
- 17.3 The Buyer shall not set off against the Price amounts due from the Seller to the Buyer.
- 17.4 The Seller may license or sub-contract all or any part of its rights and obligations under this Agreement without the Buyer's consent.
- 17.5 The Seller reserves the right to review the terms and conditions of this Agreement at any time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Seller notifies the Buyer of such change.
- 17.6 Neither party shall be liable for any default due to any Act of God. An Act of God however will not relieve or postpone any obligation to pay moneys due hereunder.
- 17.7 A waiver of any right or power under this Agreement will only be valid if given in writing by the party granting the waiver.
- 17.8 This Agreement supersedes all prior representations, arrangements and agreements between the parties in relation to its subject matter and forms the entire agreement between the parties.
- 17.9 Each provision of this Agreement capable of having effect after termination shall survive termination of this Agreement and shall not merge on such termination.