

## PHARMALINK EXTRACTS LIMITED

### TERMS OF TRADE

#### 1. Introduction and Definitions

1.1 The terms of trade set out below (**Terms of Trade**) govern the supply of all goods and services from Pharmalink Extracts Limited (the **Company**) to you (the **Client**). These Terms of Trade also apply to any person who guarantees the Client's obligations to the Company (the **Guarantor**).

1.2 The Client's request for goods or services from the Company constitutes an agreement by the Client to be bound by these Terms of Trade.

1.3 In these Terms of Trade, references to 'goods' shall include any product, substance or material that is to be or has been (as the context requires) toll manufactured or processed in any manner by the Company at the request of the Client.

1.4 These Terms of Trade are paramount and, to the extent there is any conflict between the Terms of Trade and any invoice or other document relating to any goods (including any document produced by the Client), the Terms of Trade will prevail.

1.5 Nothing in the making or performance of these Terms of Trade creates the relationship of partnership, joint venture or agent and principal between the parties. The relationship between the parties is the relationship of independent parties contracting for goods and services.

#### 2. Prices

2.1 All prices quoted exclude GST (which, where applicable, must be paid by the Client in addition to the prices quoted) and are in New Zealand dollars unless otherwise specified.

2.2 The Company reserves the right to change its prices from time to time. The Company will advise the client of any price increase at the time of accepting a new order for goods or services or at least one month prior to any price increase taking effect if it applies to an existing order for goods or services.

#### 3. Terms of Payment

3.1 Subject to clauses 3.2 and 3.3, payment by Clients is due 50% in advance and the balance due upon the goods being ready for delivery to the Client (and/or completion of work if relevant).

3.2 The Company reserves the right to require full payment in advance for the supply of goods and/or services to the Client.

3.3 If Pharmalink determines in its sole discretion to allow credit terms to apply to the Client, then payment of accounts is due on or before the 20th day of the month following the month on which the relevant invoice was dated (once a credit account has been approved).

3.4 Interest at 1.5% per month on the current balance may be charged on overdue amounts and shall accrue on a daily basis from the due date and is payable on demand by the Company. The Company reserves the right to stop all work until the account is brought up to date. The rights given to the Company in this clause are without limitation to any other rights of the Company.

3.5 Without limitation to the Company's rights otherwise, including under clause 14, in the event of a default by the Client in making any payment in accordance with this clause 3, the amount outstanding may be passed on to a debt collection agency for recovery.

3.6 Any disputes pertaining to invoices rendered must be received by the Company within seven (7) days of the date of the invoice.

#### **4. Indemnity**

The Client shall indemnify the Company against all claims, losses, expenses or damage (including indirect or consequential loss) sustained by a third party howsoever caused relating to or concerning the goods or the receipt of goods or services by the Client. The Client shall also indemnify the Company against any liability or loss incurred by the Company as a result of any breach by the Client of any provision of these Terms of Trade.

#### **5. Variation of Terms of Trade**

The Company may from time to time amend these Terms of Trade by posting or emailing to the address of the Client a written set of the amended Terms of Trade. The Client and any Guarantor(s) agree that the amended terms shall be effective upon posting or emailing and are deemed accepted by the Client placing any order after the date of posting or emailing. No other modification, variation or amendment to these Terms of Trade shall be of any force or effect unless in writing and signed by the Company.

#### **6. Information and Privacy Act**

6.1 The Client and the Guarantor(s) agrees that any information about them provided at any time to the Company may be used by the Company for any purpose connected with its business including (but not limited to) direct marketing, debt collection and credit reporting or assessment.

6.2 The Client and the Guarantor(s) authorise the Company to provide such information to any external agency or party for credit information and assessment purposes and/or for debt collection purposes and that agency or party is hereby authorised to use and continue to use such information as part of their business(es) services. The Company and/or the external agency or party may retain and/or use such information for as long as they see fit.

6.3 The Client and the Guarantor(s) may request access to and correction of any information held about them by the Company at any time.

#### **7. Client Information**

The Client warrants that the information (including instructions and specifications) supplied to the Company is and remains true and correct. The Client expressly acknowledges that the Company will rely upon the correctness of the representations and information the Client has provided and that the Company will rely on all goods supplied by the Client meeting the original or base specifications

reasonably required to enable the Company to supply the toll manufacturing or processing of goods. The Client further undertakes to inform the Company of any changes in that information.

## **8. Intellectual Property**

All intellectual property shall remain the property of the Company. The sale of any goods or services shall not, unless expressly agreed in writing, give the Client the right to use, sell, disseminate or duplicate any trade mark, copyright, design or any other intellectual property right belonging to the Company.

## **9. Warranty and Liability**

9.1 The Company warrants that goods supplied will be in accordance with the written specification provided (if any) by the Company. Specifications may be varied by the Company from time to time but not without prior notice and consultation with the Client.

9.2 Except for the express warranty in clause 9.1:

9.2.1 no warranty, condition, stipulation or implied term is given by the Company to the Client; and  
9.2.2 all warranties, descriptions, representations or conditions either express or implied by law, by trade, by custom or otherwise are excluded to the fullest extent permitted by law.

9.3 The Company accepts no liability for any allergic or other reaction or consequence (direct or indirect) as a result of the use of the goods supplied. Without limiting clause 9.2, the Company gives no warranty that the goods supplied contain or confer any health, therapeutic or other properties.

9.4 The Company shall use reasonable endeavours to follow all reasonable instructions and specifications (if any) of the Client in relation to the goods supplied by the Client for toll manufacturing or processing. Without creating an obligation to check the reasonableness of instructions or specifications from a Client, the Company may reject an instruction or specification from a Client where it believes that doing so would be unsafe or yield specifications contrary to what the Client requested. For clarity, the Company shall have no liability for any loss, damage or harm suffered or incurred by the Client or any third party resulting from the Company having carried out any instructions issued by the Client.

9.5 Any liability of the Company is strictly conditional upon full payment for the goods and services having been received by the Company.

9.6 Notwithstanding anything else contained in these Terms of Trade or any other document relating to the goods or services, the liability of the Company to the Client under and/or in relation to these Terms of Trade and/or the supply of the goods or services (whether in contract, tort (including negligence), statute, equity or otherwise) shall not in aggregate exceed the lower of (i) the cost value of the goods provided by the Client which have been affected by the default of the Company, and (ii) the price payable by the Client for the particular goods and services provided by the Company in respect of which the liability arises.

## **10. Personal Property Securities Act 1999 (“PPSA”)**

10.1 In this clause 10 and for the purposes of the Company’s rights under the PPSA, “Collateral” shall mean the good, product, material or substance resulting from the extraction, freeze drying, hard gel encapsulation, toll manufacture or other technique, process or method performed by the Company on or in respect of the biomass product, material or substance supplied to it by the Client. Other capitalised terms in this clause 10 shall have the meaning prescribed to them in the PPSA.

10.2 The Client acknowledges the Company’s Security Interest in the Collateral supplied to the Client but not paid for under these Terms of Trade.

10.3 The Company reserves the right at its discretion to register a Financing Statement in respect of the Collateral. The costs of registering a Financing Statement or Financing Change Statement shall be paid by the Client and may be debited by the Company against the Client’s account with the Company. On the request by the Company the Client shall promptly execute any documents and do anything else required by the Company to ensure that the Company’s Security Interest in the Collateral created by these Terms of Trade constitutes a Perfected Security Interest over the Collateral.

10.4 The Client shall not agree to allow any person to file a Financing Statement over the Collateral without the prior consent of the Company and shall notify the Company immediately if it becomes aware of any person taking steps to file a Financing Statement against any of the Collateral.

10.5 The Client and Guarantor (if any) agree that nothing in s114(1)(a), 116, 120, 133, and 134 of the PPSA will apply to these Terms of Trade and the Client waives its rights as a debtor under sections 121, 125, 129, 131 and 132 of the PPSA.

10.6 The Client waives its right under section 148 of the PPSA to receive a copy of the Verification Statement.

## **11. Delivery and Risk**

11.1 The Client shall be solely responsible for the delivery of goods to the Company at the premises of the Company (as notified by the Company from time to time) including unloading such goods at the relevant premises.

11.2 The Client shall meet all costs associated with the delivery of goods to the Company.

11.3 Risk in goods shall only pass from the Client to the Company upon physical delivery (on an unloaded basis) to the Company.

11.4 Risk in goods shall pass from the Company to the Client at the time the goods are collected from the Company’s premises.

11.5 The Company may assist the Client from time to time (at its discretion) in arranging delivery and collection of goods. However, where it does, it does so on a no-obligations basis and without any liability.

## 12. Title

The Client acknowledges that the Company reserves title to each consignment of goods supplied by the Client until full payment is made by Client in respect of that consignment. Accordingly, the Client acknowledges that it holds each consignment of goods upon trust for the Company as beneficial owner until such time as payment in full has been made. For so long as title to goods is reserved to the Company in terms of the foregoing, the Client authorises the Company (through its agent) to enter the premises of the Client and any other premises wherein goods may be held for the purposes of regaining possession of goods until such time as payment in full is made.

## 13. Default

13.1 In the event that the Client fails to make any payment when due or otherwise breaches these Terms of Trade or becomes or is deemed to be insolvent, commits an act of bankruptcy, is adjudicated bankrupt or makes any composition or arrangement with creditors or being a company goes into liquidation whether compulsory or voluntary (other than for the purpose of and followed by an amalgamation or solvent reconstruction), has a receiver or administrator appointed over any part of its business or assets, or ceases business (each of the foregoing being an event of default by the Client), then the Company reserves the right to:

- 13.1.1 treat all sums due or to become due from the Client as immediately due and payable;
- 13.1.2 cancel or suspend any delivery of goods;
- 13.1.3 enter onto the Client's premises (without the necessity of giving notice) where the goods may be stored and to search for and remove and take possession of the goods without being in any way liable to the Client or anyone claiming under it for so doing; and/or
- 13.1.4 withhold the further supply of goods on credit.

13.2 In the event of default by the Client under these Terms of Trade, and without limiting the Company's other rights, the Client will at the Company's request:-

- 13.2.1 re-deliver the goods to the Company or do anything reasonably necessary to allow the Company to retake possession of them;
- 13.2.2 instruct any third parties who owe money in respect of goods to pay that money direct to the Company; and/or
- 13.2.3 make any records available that may assist the Company to take the proceeds of the goods.

13.3 The Client will be liable for and indemnifies the Company for all expenses and losses incurred or suffered by the Company in the enforcement of, or as a result of any default by the Client under these Terms of Trade including, without limitation, legal costs and debt collection agency fees.

## 14. Arbitration

Any dispute whatsoever arising in relation to these Terms of Trade shall be referred to arbitration in accordance with the provisions of the Arbitration Act 1996 or any statutory modification or amendment thereof at the time being in force.

## 15. Jurisdiction

New Zealand law shall govern and New Zealand courts shall have non-exclusive jurisdiction in relation to any dispute.



Nutraceutical innovation and manufacture

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#### **16. Force Majeure**

The Company shall not be liable to the Client for damages directly or indirectly arising from any failure in delivery of the goods or failure to perform any of these Terms of Trade where such failure is caused directly or indirectly by an act of God, electrical failure, fire, labour dispute, civil commotion, Government intervention, or inability to obtain labour or materials, accidents, transportation delays, or any other cause beyond the Company's reasonable control.

#### **17. Consumer Guarantees Act 1993 ("CGA")**

The Client acknowledges and agrees that it acquires goods and services from the Company solely for the purposes of resupply in trade for the purposes of the Client's business and that, accordingly, the provisions of the CGA will not apply to any such supply.

#### **18. Severance**

In the event of the invalidity of any part or provision of these Terms of Trade, such invalidity shall not affect the enforceability of any other part or provision of these Terms of Trade.

#### **19. Confidentiality**

To the extent any confidential information is passed on by a party to the other, the other party must keep that information confidential. The price and other terms offered by the Company to the Client is confidential to the company.