

TERMS AND CONDITIONS OF SALE - AUSTRALIA

Last Updated July 2022

1 Terms

- 1.1 References in these terms and conditions of sale ('Terms') to "Essity", "us" or "we" are references to BSN Medical Australia Pty Ltd ABN 84 095 746 204 trading as Essity Australia, unless otherwise specified in these Terms. References to "you", "your" and the "Purchaser" are references to you, the purchaser of any goods offered for sale by us. These terms and conditions may be updated by Essity from time to time. The current version of these terms and conditions is available at <https://medical.essity.com.au/essity-medical-solutions/footer/terms-conditions.html>
- 1.2 The version of these Terms current at the time an order is submitted by Purchaser to Essity applies to the purchase of any goods listed on Essity's current price list that are specified in any order submitted by the Purchaser ('**Order**').

2 Orders

- 2.1 A contract will be formed when such an Order is accepted (with or without agreed modifications) by Essity ('**Contract**'). An Order will be accepted by Essity if Essity sends to the Purchaser a confirmation of receipt of that Order ('**Confirmation**') and, within 5 days of the date of the Confirmation, Essity has not sent a written rejection or proposed modification of that Order. If Essity proposes any modification(s) to an Order, and the Purchaser accepts those modifications in writing within 5 days of the date that they were proposed by Essity, then Essity will be taken to have accepted that Order with the proposed modifications on the date that Essity receives the Purchaser's acceptance. The submission of an Order to Essity and the acceptance of the Goods by the Purchaser are both conclusive evidence that these Terms apply and are binding on the Purchaser.
- 2.2 Each Contract constitutes the entire agreement between the Parties. You acknowledge and agree that you have not relied on any statement, promise, representation, assurance or warranty made or given by Essity which is not set out in a Contract. Any terms or conditions proposed by you that are different from, or in addition to, these Terms are expressly rejected by Essity, and will not be binding upon Essity, unless specifically agreed in writing by Essity.

3 Price and payment

- 3.1 The Price of the Goods does not include delivery fees, order handling charges, or minimum order surcharges, and is exclusive of GST and other taxes and duties. Delivery fees, order handling charges, minimum order surcharges and GST and other taxes and duties must be paid by you to Essity in addition to the Price ('**Total Price**').
- 3.2 The time for payment of the Total Price for the Goods will be as agreed by the Parties in writing. If no time is specifically agreed then payment must be made prior to the delivery of the Goods.
- 3.3 Payment is only received by Essity when it receives the Total Price and the proceeds of payment are credited and cleared to Essity's nominated bank account. Payment must be made by electronic funds transfer to the nominated Essity bank account. Essity may notify you of updated bank account details from time to time.
- 3.4 If the Total Price is not paid in full when due, then, without affecting any of Essity's other rights or remedies, Essity may charge interest at 1% compounding monthly on all unpaid amounts.

Interest will accrue from day-to-day from and including the due date for payment up to and including the actual date of payment.

- 3.5 Until payment of the Total Price in full is received, Essity reserves the right to cancel any Order.
- 3.6 Once payment in full for an accepted Order is received by Essity, the Contract for that Order will constitute a binding legal agreement between you and Essity, and may not be varied, suspended or cancelled by you without Essity's prior approval.

4 Delivery of the Goods

- 4.1 If an Order fails to meet the minimum order value of \$A300.00 or as specified in Essity's price list at the time the Order is placed ('**Minimum Order Value**'), then the Purchaser agrees to pay the then minimum order surcharge specified by Essity from time to time ('**Minimum Order Surcharge**') for the delivery of that Order to the nominated delivery address (a '**Delivery Location**'). If an Order meets the Minimum Order Value then Essity will pay the costs of a carrier engaged by it to deliver the Goods the subject of that Order to an address agreed with the Purchaser (also a '**Delivery Location**'). Delivery will occur when Goods the subject of an Order (appropriately packaged and addressed to the Purchaser) are placed in the collection area of the premises of Essity's nominated third party logistics provider ('**Delivery**').
- 4.2 Delivery and dispatch dates quoted are approximate only and Essity is not liable for any delay in the delivery of the Goods.
- 4.3 Risk in the Goods will pass to the Purchaser at the time of Delivery. The Purchaser will be responsible for insuring the Goods at their full replacement value on and from the time of Delivery.
- 4.4 If you fail to take delivery of the Goods, at the Delivery Location or fail to give adequate delivery instructions then, without affecting any of Essity's other rights or remedies, Essity may store the Goods until actual delivery takes place and charge you for the reasonable costs (including insurance) of storage and for any redelivery of the Goods. Essity may, after 30 days, sell the Goods at the best price readily obtainable and then (after deducting reasonable storage and selling expenses) account for the excess over the Total Price, or charge you the amount of any shortfall (which must be paid by you within 7 days).

5 Title and Security

- 5.1 Ownership of each unit of the Goods will remain with Essity until all amounts owing by you to Essity on any account whatsoever (including the Total Price for the Goods) ('**Amounts Owning**') have been paid.
- 5.2 Until the Amounts Owning have been paid, you:
 - (a) may, subject to clause 5.3, take possession of the Goods and hold them as trustee and agent for Essity;
 - (b) must ensure that the Goods are insured, and stored or identified so that they are readily distinguishable from other goods held by you or other persons.
- 5.3 Until the Amounts Owning have been paid, you have the right to move, sell and otherwise use the Goods in the ordinary course of your business, subject to the following:
 - (a) you may sell the Goods, but must hold the proceeds you receive from any sale of the Goods as trustee for Essity; and
 - (b) you must place the whole of the monetary proceeds in an ADI account separate from your own monies and maintain proper records of that ADI account; and

- (c) without limiting the foregoing, all accounts relating to any sale of the Goods are owned by Essity and any rights you have in respect of such accounts are transferred to Essity.

Despite clause 5.3(a), you must not represent to any third parties that you are acting as an agent of Essity and Essity will not be bound by any contracts with third parties to which you are a party.

5.4 If you fail to comply with any terms of a Contract in relation to the payment of any Amount Owing or otherwise or if you become insolvent you will be in default. If you default, then:

- (a) immediately on Essity's request, you must return to Essity any unpaid Goods delivered by Essity; and
- (b) Essity may enter the premises at which those Goods are stored, and seize possession of any Goods for which you have not paid; and
- (c) Essity may retain, sell or otherwise dispose of those Goods.

5.5 You must not assign or grant a security interest in respect of any accounts owed to you in relation to the Goods without Essity's prior written consent. Essity has a security interest in all such accounts to secure the Amounts Owing.

5.6 Without limiting the meaning of Amounts Owing, if you make a payment to Essity at any time whether in connection with a Contract or otherwise Essity may apply that payment as it sees fit.

5.7 If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising in connection with these Terms or a Contract, to the extent the law permits, the Parties agree that:

- (a) for the purposes of sections 115(1) and 115(7) of the PPSA:
 - (i) Essity needs not to comply with sections 95, 121(4), 125, 130, 132(3)(d) or 132(4) of the PPSA; and
 - (ii) sections 142 and 143 of the PPSA are excluded; and
- (b) for the purposes of section 115(7) of the PPSA, Essity needs not to comply with sections 132 and 137(3) of the PPSA.

5.8 You waive the right to receive any notice under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.

5.9 You consent to Essity effecting and maintaining a registration on the PPSA register (in any manner Essity considers appropriate) in relation to any security interest contemplated by these Terms and you agree to provide all assistance reasonably required to facilitate this. You agree to pay all fees and charges associated with Essity making such registrations. You must notify Essity at least 14 days before you change your name, Australian Company Number or Australian Business Number or become the trustee of a trust or a partner in a partnership.

5.10 To the extent permitted by section 275 of the PPSA, the Parties agree to keep the terms of each Contract and all information related to it (including information of the kind mentioned in section 275(1) of the PPSA) confidential and to not disclose that information to any person except where the disclosure is required by law (other than section 275(1) of the PPSA).

6 Collection of Personal Information

6.1 In addition to the collection of personal information as set out in the Essity Privacy Policy available to <https://medical.essity.com.au/about-essity/policies/privacy-and-confidentiality->

policy.html, you consent to Essity and/or a payment processor collecting your personal information to process payments made by you through the processor's payment gateway services. Any credit card information provided to Essity will only be used for the processing of payments and will not be saved by Essity.

- 6.2 You warrant and represent that any personal information provided to Essity that is not your personal information is provided by you with the prior written consent of the individual concerned, and you indemnify Essity from any claim made by a third party concerning Essity's collection and use of their personal information while considering and processing an order placed by you.
- 6.3 Within 5 days of a request by Essity you will provide to Essity a copy of the written consent of any individual whose personal information you have included in any order.

7 Returns

- 7.1 Essity will accept the return of Goods for a failure of the Goods to comply with an Order, including a failure to comply with the measurements specified in the Order within 10 days of the date of Delivery. Any such returned Goods will be replaced within a reasonable time. Essity will not accept any returns due to a change of mind.
- 7.2 Any claim by you relating to Products which is based on any defect in material or workmanship evident at the time of delivery, or for non-delivery (whether or not delivery is refused by you), must be notified to Essity within 10 days from the date of Delivery. If no such claim is notified to Essity within this time, you are not entitled to reject the Goods and you will be bound to pay the Price as if the Goods had been delivered in accordance with the Contract.
- 7.3 Any claim by you relating to the Goods which is based on any defect in material or workmanship or for non-delivery must be notified to Essity's Customer Service team, contactable on 1300 276 633).
- 7.4 You will allow Essity to inspect the Goods within a reasonable time following notification of any suspected defect. If you fail to comply with this provision, the Goods will be taken as delivered in accordance with the Contract free from any defect.
- 7.5 Where Essity accepts that the Goods have a defect in material or workmanship then Essity will accept the return of those Goods by you and upon receipt will credit the Total Price paid by you for those Goods to your account.
- 7.6 Essity may, in its absolute discretion, accept the return of Goods by you for any reason. Matters that Essity may consider in exercising its discretion include: whether the Goods are in their original packaging; the expiry date of the Goods; and whether the Goods are otherwise in a saleable condition. If Essity agrees to the return of Goods (other than pursuant to clause 7.1 or 7.2) then you must pay the freight and insurance costs incurred in the return of those Goods.

8 Warranty

- 8.1 Nothing in these Terms excludes, restricts or modifies any terms, guarantees, conditions or warranties or Essity's liability for them which are imposed or implied by any statute, including the *Competition and Consumer Act 2010 (Cth)*, and which by statute cannot be excluded, restricted or modified. Limitations and exclusions are made only to the extent that Essity may legally do so.
- 8.2 Subject to clause 8.5, and except as set out below, Essity warrants that the Goods will be free from defects in materials and workmanship for the shorter of the stated shelf-life of the Goods or 12 months from Delivery ('**Warranty Period**'); and in case of delivery of services, Essity only warrants that the services have been provided with reasonable skill and care. All other warranties, conditions or other terms, whether express, implied, statutory or otherwise

(including, but not limited to, merchantability and fitness for purpose) are excluded to the fullest extent permitted by law. This warranty will cease and will not apply to the extent that any non-compliance or defect in the Goods that has been caused, or contributed to, by: any failure to use, apply, store or maintain the Goods as instructed by Essity; normal wear and tear; use of the Goods other than for their agreed purpose; any defect in the Goods arising from a design, drawing or specification supplied by the Purchaser or on the Purchaser's behalf; any failure by the Purchaser to follow any instructions or guidelines provided in respect of the Goods; the continued use of any Goods after any defect becomes apparent; any Goods repaired or altered without the Essity's written consent; or any deficiencies resulting from other reasons beyond Essity's control. No warranty claims may be made unless the Purchaser has paid the Total Price in full. The warranties will not apply if the Purchaser, in case of a defect, does not promptly take all appropriate steps to mitigate its damages and notify Essity of the defect.

8.3 If any failure to meet the warranties under clause 8.2 appears within the Warranty Period, the Purchaser must promptly notify Essity in writing. Where any valid warranty claim is made in respect of any of the Goods within the Warranty Period set out in clause 7.2, Essity's liability is limited to:

- (a) in the case of Goods, at Essity's option, the replacement of the Goods or the supply of equivalent goods; the repair of the Goods; the payment of the cost of replacing the Goods or of acquiring equivalent goods; or the payment of the cost of having the Goods repaired; and
- (b) in the case of services, at Essity's option, supplying the services again; or paying the cost of having the services supplied again.

8.4 The supply of repaired or replacement Goods by Essity pursuant to this clause 8 will not extend the duration of the Warranty Period.

8.5 Where any Goods supplied to the Purchaser are not manufactured by Essity (or one of Essity's related bodies corporate) then the only warranty that will apply to those Goods will be the applicable warranty provided by the manufacturer of those Goods. Essity will have no liability or responsibility in relation to any warranty or representation given by the manufacturer of those Goods.

8.6 All warranties, releases, exclusions of liability and indemnities will remain valid and binding following the termination of a Contract.

9 Limitation of Liability

9.1 To the extent permitted by law, your remedies set out in these Terms are exclusive, and the total aggregate liability of Essity, in relation to all claims of any kind, whether in contract, warranty, indemnity, tort (including negligence), statute, strict liability, or otherwise, will not exceed 100% of the Total Price at which the Goods giving rise to the claim were sold to you.

9.2 In no event, whether as a result of breach of contract, warranty, indemnity, tort (including negligence), statute, strict liability, or otherwise, will Essity or its subcontractors or suppliers be liable for any one or more of the following: loss of profit, revenue, business, contracts, opportunity, goodwill, use, production, anticipated savings, expenses, costs or similar loss; any special, consequential, incidental, indirect, speculative, punitive or exemplary loss or damage; and claims of your customers for any of the foregoing damages.

9.3 Nothing in these Terms will operate or be construed to operate so as to exclude or restrict the liability of Essity for death or personal injury caused by reason of the negligence of Essity (subject to the contributory liability of any other person) or any other liability that may not be excluded or restricted under the governing law of these Terms.

9.4 To the extent that any Goods sold to you are not goods of a kind ordinarily acquired for personal, household or domestic use, or consumption, Essity's liability in relation to those Goods is limited to, at Essity's option, one of the following:

- (a) the replacement of the Goods or the supply of equivalent goods;
- (b) the repair of the Goods;
- (c) the payment of the cost of replacing the Goods or of acquiring equivalent goods; or
- (d) the payment of the cost of having the Goods repaired,

and you must limit your liability to your customers in the same way for Goods of that kind.

10 Your Warranties

10.1 You warrant and represent that you will purchase each Order for resupply by you to your patient or customer.

10.2 Where Goods are sold by size or other specifications, you warrant and represent that you are responsible for accurately taking and recording in the Order all relevant measurements and specifications for the Goods ordered.

10.3 You warrant and represent that you will not make any warranties or representations in relation to any Goods other than warranties and representations contained in documentation for patients/users supplied by Essity in relation to those Goods.

11 Force majeure

11.1 Essity will not be liable to you for any failure or delay in the performance of any of its obligations under the Contract where it is prevented by:

- (a) reasons beyond its reasonable control including any act of God, malicious damage, industrial action, government action, accident, breakdown of machinery, default of a supplier, epidemic, pandemic, fire, flood, or similar event; or
- (b) your acts (or omissions).

12 Intellectual Property

12.1 All information, drawings, specifications, documents, design material and all other data which Essity has given you are proprietary and confidential and will remain the absolute exclusive property of Essity together with all intellectual property rights in those items. You agree that you will not disclose any such information to third parties, whether directly or indirectly, without Essity's prior written consent. All intellectual property rights, including but not limited to, inventions, patents, copyrights, trade marks, designs, confidential information and know how, belonging to or provided by Essity and used or developed in the course of the fulfilment of a Contract by Essity will remain the absolute exclusive property of Essity.

13 Default and Termination

13.1 Without prejudice to any other rights or remedies of Essity, if the Purchaser:

- (a) fails to pay any amount due under a Contract by the relevant due date; or
- (b) commits a material breach of any other term of a Contract, and fails to remedy that breach within 10 days of receiving notice from Essity requiring the breach to be remedied; or

- (c) goes into liquidation or external administration or has a receiver or manager appointed in relation to any of its assets or becomes insolvent or makes any arrangements with its creditors,

then all amounts owing to Essity, whether due for payment or not, will become immediately due and payable and Essity may (at its option) take one or more of the following actions:

- (a) suspend the delivery of any Goods;
- (b) recover possession of any Goods supplied under the Contract and dispose of them in accordance with clause 4.4; and
- (c) immediately terminate the Contract,

and all costs incurred by Essity in taking any such action must be paid by the Purchaser.

13.2 Upon termination of a Contract the Purchaser must pay Essity the Total Price in respect of all Goods that have been delivered or are the subject of the Contract.

13.3 Termination of a Contract will not affect any of the rights and obligations of the Parties existing immediately prior to termination or any provisions of the Contract which are intended to survive termination.

14 Confidentiality

14.1 In connection with these Terms, Essity and the Purchaser (as to information disclosed, the “**Disclosing Party**”) may each provide the other party (as to information received, the “**Receiving Party**”) with Confidential Information. The Purchaser must not provide any Confidential Information to Essity without the Essity’s prior written consent to receive it. “**Confidential Information**” as used in these Terms will mean information in relation to the pricing of the Goods and any discounts, rebates and other commercial terms offered, all terms of each Contract and all information related to the business or products of the Disclosing Party that is not known generally to the public, provided that the obligations of these Terms will not apply as to any portion of the Confidential Information which:

- (a) is or becomes generally available to the public other than as a result of disclosure by the Receiving Party; or
- (b) becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party when such source is not, in the best of the Receiving Party’s knowledge, subject to a confidentiality obligation to the Disclosing Party; or
- (c) has been or is subsequently independently developed by the Receiving Party without reference to the Confidential Information.

14.2 The Receiving Party agrees, except as otherwise required by law (other than section 275(1) of the PPSA):

- (a) to keep the terms of each Contract and all information related to it confidential;
- (b) to use the Confidential Information only in connection with a Contract, and permitted use of the Goods, and
- (c) to take reasonable measures to prevent disclosure of the Confidential Information, except to its employees to the extent necessary to facilitate the performance of its obligations and the exercise of its rights under a Contract. The Receiving Party accepts liability that its employees will abide by these provisions.

14.3 If either party is requested or required (by interrogatories, subpoena, or similar legal process) to disclose any Confidential Information, such party agrees to provide the Disclosing Party with

prompt notice of each such request, to the extent practicable, so that the Disclosing Party may seek an appropriate protective order or waive compliance by the Receiving Party with the provisions of this clause 14, or both.

15 Notices

- 15.1 Any notice given under these Terms must be in writing, addressed to the registered office or principal place of business of the addressee or any other address as may at the relevant time have been notified as the correct address for service of documents. Any notice must be given by hand or sent by (airmail if overseas) registered delivery post or via email.
- 15.2 Any notice, demand, or other communication will not be effective until received and will be deemed, in the absence of proof to the contrary, to have been received by the Party to whom it was sent:
- (a) in the case of personal delivery, when delivered;
 - (b) in the case of a letter, on the fifth working day after posting; and
 - (c) in the case of an email, on the date and time at which the senders' information system indicates that the email was sent to the email address of the notified addressee, unless an 'undelivered' message is generated in relation to that email.

but if the delivery or receipt is on a day which is not a working day, it is deemed to have been received at 9:00am on the next working day.

16 General

- 16.1 These Terms and the Order accepted by Essity (with or without modifications) contain the entire agreement between the Parties and no other agreements, representations, warranties, guarantees, promises or understandings express or implied will bind the Parties or form part of a Contract. Each Party agrees that it has not relied on, or been induced by, any representations of the other Party not contained in these Terms or the Contract.
- 16.2 If a provision of a Contract is unenforceable, the provision will be read down to the extent necessary to avoid that result and, if the provision cannot be read down to that extent, it will be severed without affecting the validity and enforceability of the remainder of that Contract.
- 16.3 A waiver of any right or remedy under a Contract or law is only effective if given in writing and will not constitute a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under a Contract or by law will constitute a waiver of that or any other right or remedy. No single or partial exercise of such a right or remedy will prevent or restrict the further exercise of that or any other right or remedy.
- 16.4 Except as set out in these Terms, no variation of a Contract, including the introduction of any additional terms and conditions, will be effective unless it is in writing and signed by Essity.
- 16.5 Each Contract, and any dispute or claim arising out of or in connection with it, or its subject matter or formation (including non-contractual disputes or claims), will be governed by and construed in accordance with, the laws of Victoria, Australia.
- 16.6 Each Party irrevocably agrees that the competent courts in Victoria will have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with a Contract or its subject matter or formation (including non-contractual disputes or claims).

17 Definitions

- 17.1 The following definitions apply in these Terms:

Contract means an Order submitted by you accepted by Essity in writing, together with these Terms at the time the Order was placed.

Goods means goods listed for sale on Essity's current price list that are specified in an Order accepted by Essity in writing.

GST and Goods and Services Tax have the meaning given in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Parties mean Essity and you.

PPSA means the Personal Property Securities Act 2009 (Cth) and any regulations made pursuant to it.

Price means the price of the Goods listed in Essity's then-current price list, excluding delivery charges, GST and any additional charges.

Terms means these terms and conditions of sale as updated by Essity from time to time.

17.2 In these Terms:

- (a) paid means receipt of cash or cleared funds by Essity in full satisfaction of the Amounts Owed;
- (b) the following words have the respective meanings given to them in the PPSA: account, ADI account, proceeds, register, registration, security interest and verification statement;
- (c) references to "include" and "including" are to be construed without limitation;
- (d) headings are for convenience only and will not affect the interpretation of these Terms;
- (e) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning; and
- (f) a reference to a person includes a reference to a corporation, firm, association or any other entity, and vice versa.