

# Terms and Conditions - Sale

## 1. Application

- 1.1 These Terms and Conditions apply to the ordering, purchase, fulfilment and delivery of Goods from [www.medimart.com.au](http://www.medimart.com.au) (**Website**) and from any Medimart Store together with the:
- 1.1.1 **Terms of Use of Website** (as applicable for a Website Order);
  - 1.1.2 **Competitive Pricing Policy**;
  - 1.1.3 **Refund, Return, Repair Policy**;
  - 1.1.4 **Shipping Policy**; and
  - 1.1.5 **Privacy Policy**

despite any contrary terms and constitutes the entire agreement between the parties to the exclusion of all other terms and conditions. If you do not accept these Terms and Conditions, you must refrain from using the Website or making a purchase from a Medimart Store.

- 1.2 By accessing and/or using the Website or entering a Medimart Store, you accept these Terms and Conditions and agree to be bound by them, and an agreement is formed between Medimart and you.
- 1.3 These Terms and Conditions may be amended by Medimart at any time without notice. Purchases following such amendment of these Terms and Conditions will represent an agreement by you to be bound by these Terms and Conditions as amended. We recommend you review the Terms and Conditions for amendments each time you use the Website, enter a Medimart Store and before placing any Order or making a purchase of Goods.
- 1.4 Should Medimart choose to provide you with notice of amended terms, you agree to receive email notification of the amendments from us or our third party.
- 1.5 No representations, inducements, promises or agreements between the parties will be of any force or effect in varying these Terms and Conditions.

## 2. Legal Capacity

- 2.1 You must be eighteen (18) years of age or over to register an account on the Website and to purchase Goods from the Website or at any Medimart Store.
- 2.2 Any Order and/or purchase of Goods made by you using this Website or at a Medimart Store is an acknowledgement by you that you:
- 2.2.1 are over the age of eighteen (18) years;
  - 2.2.2 accept these Terms and Conditions;
  - 2.2.3 agree that you have entered into a legal contract with Medimart in relation to these Terms and Conditions; and
  - 2.2.4 these Terms and Conditions, together with your Order/purchase, constitute the entire agreement between you and Medimart for the supply of Goods.
- 2.3 Medimart reserves the right to take legal action and seek compensation from the parent or guardian of a minor who causes an Order to be placed, for any loss or damage Medimart may suffer as a result of a transaction entered into by a minor.

## 3. Promotional Material & Goods Specifications

- 3.1 The specifications, descriptions and illustrations contained on the Website or at a Medimart Store, any catalogues, price lists and other advertising material are intended merely to present a general idea of the Goods described therein.
- 3.2 Medimart accepts no responsibility for the accuracy of any such design drawings, specifications, illustrations, samples, instructions and submissions and these do not constitute any warranty guarantee, representation or opinion of the practicability or the efficacy, safety or otherwise of the Goods and Medimart will not be liable for any consequential loss or damage caused by any defect or otherwise.
- 3.3 All drawings, catalogues, printed matter are informative only and weights, measurements, powers, capacities or other particulars of Goods offered are stated in good faith and, subject to the terms hereof. Inaccuracies shall not void or violate these Terms and Conditions nor be made the basis of any claim against Medimart or justify rejection of the Order or of the Goods.

## 4. Orders

- 4.1 Representations of Goods for sale made by Medimart on the Website or at a Medimart Store do not constitute an offer to sell but an invitation to treat.
- 4.2 (**Website Order**) You and Medimart may enter into a contract for the sale and supply of Goods by you making an offer via the Website to purchase a Good at the price advertised on the Website by:
- 4.2.1 placing an electronic Order for the Goods using the Website;
  - 4.2.2 you confirming the Order details in accordance with the procedure on the Website;
  - 4.2.3 you making payment in full (plus any applicable shipping/delivery charges) on the Website; and
  - 4.2.4 the acceptance of that offer by Medimart. Orders will be deemed to have been received by Medimart at the time Medimart sends an Order confirmation to your nominated email address and the Goods are delivered in accordance with the **Shipping Policy**.
- 4.3 (**Medimart Store Order**) You and Medimart may enter into a contract for the sale and supply of Goods by you making an offer via at a Medimart Store to purchase a Good at the price advertised at the Medimart Store by:
- 4.3.1 attending the register and placing an Order for the Goods with the Medimart Store personnel;
  - 4.3.2 you confirming the Order details in accordance with the procedures at the Medimart Store;
  - 4.3.3 you making payment in full (plus any applicable shipping delivery charges) or as otherwise agreed at the on the Medimart Store; and
  - 4.3.4 the acceptance of that offer by Medimart. Orders will be deemed to have been received by Medimart at the time Medimart sends an Order confirmation to your nominated e-mail address and the Goods are delivered in accordance with the **Shipping Policy** (e.g., delivered to your specified delivery address or on collection of your Order from a Medimart Store).

- 4.4 Once you have placed your Order, you cannot cancel or revoke your Order, unless expressly provided for in these Terms and Conditions.
- 4.5 Medimart reserves the right and may, in Medimart's absolute discretion, decline to accept an Order and may cancel your Order at any time prior to delivery of the Goods.
- 4.6 In the event of a cancelled Order not dispatched, funds paid in relation to that Order will be refunded in full (less merchant charges). You will be provided with e-mail confirmation of the cancellation and refund.
- 4.7 Any representations made about stock availabilities are accurate to the last known stock level and are subject to change.
- 4.8 Medimart shall not be liable for any delay in performing any of its obligations under these Terms and Conditions and if such delay is caused by circumstances beyond the reasonable control of Medimart, and Medimart shall be entitled to a reasonable extension of time for the performance of such obligations.
- 4.9 If you have any query about the progress of your Order, please contact the Customer Support Team. Please provide your Order number.

## 5. Price

- 5.1 Prices shown are in Australian dollars and include GST where applicable. Prices may not include delivery and handling charges. Prices are subject to change without notice.
- 5.2 Once an Order has been accepted by Medimart, the price of the Good cannot be varied except:
- 5.2.1 by agreement between you and Medimart in writing or by email; or
- 5.2.2 in accordance with clause 6.6.
- 5.3 A published saving in respect of a Good is by reference to the lower of the recommended retail price of the manufacturer or the normal ticketed price of Medimart.
- 5.4 Images of Goods shown without any advertised price beside that image are not offered for sale.
- 5.5 Unless otherwise stated, any accessories shown in any image of Goods are not included in the price.
- 5.6 We reserve the right to correct any errors published on the Website, any promotional material and at a Medimart Store.

## 6. Payment

- 6.1 All payments for an Order must be made in full prior to delivery.
- 6.2 Payments must be made via the Website (or by third party payment gateway and will be subject to any terms and conditions of these providers) or at a Medimart Store.
- 6.3 Payment may be made by a third party on your behalf (including but not limited to by a Payment Provider).
- 6.4 To the extent permitted by law, Medimart will not be responsible for any damages or consequential losses (whether direct or indirect) suffered by you where a credit card is fraudulently used or is used in an unauthorised manner.
- 6.5 If your selected payment method triggers Medimart's fraud prevention protocols, Medimart may contact you to confirm additional details, or rescind the Order. In this case, until your Order has passed Medimart's fraud prevention protocols your Order will not be fulfilled. If you do not provide the requested information within up to 7

days, your Order will be cancelled, and your payment will be refunded back to the method in which you paid (less merchant charges). These information requests are sent to help protect credit card holders from online fraud.

- 6.6 Despite Medimart's best efforts, on occasion it may be possible that a small number of the Goods may be incorrectly priced on the Website or at a Medimart Store. If Medimart has made a mistake and a Good's accurate price is higher than the price on the Website or at a Medimart Store, Medimart may either contact you before shipping to request whether you want to buy the Good at the correct price or cancel your Order. If a Good's accurate price is lower than the stated price on the Website or at a Medimart Store, Medimart will charge the lower amount and deliver the Good to you, or where the higher inaccurate price has been charged, Medimart will refund the price difference and deliver the Good to you (less merchant charges).

## 7. Additional Charges

- 7.1 In addition to any Price payable, you will be responsible to pay to Medimart:
- 7.1.1 any costs for delivery, unloading, reloading, collection and installation of the Goods;
- 7.1.2 any costs caused by inaccuracies arising through orders, instructions or information given by you to Medimart;
- 7.1.3 any costs of from changes to installation or delivery requirements of Medimart prior to, during, or after installation or delivery of the Goods;
- 7.1.4 any applicable tax, Goods and Services Tax (GST), stamp duty, fee, levy or charge of any nature whatsoever imposed by any semi government or government authority; and
- 7.1.5 any other charges detailed in the Order and associated Tax Invoice.
- 7.2 If you request operational guidance or training on the use of the Goods, Medimart may provide such guidance or training to the extent that Medimart is able and you agree to pay the cost for the provision of those services at the standard hourly rates as determined by the Medimart from time to time and as otherwise agreed between you and Medimart.

## 8. Supply, Delivery and Collection of Goods

- 8.1 Subject to you complying with these Terms and Conditions and acceptance of your Order by Medimart (whether a Website Order or Medimart Store Order), Medimart will sell and supply the Goods to you as shown on your Order and associated Tax Invoice.
- 8.2 Goods may not be available for immediate delivery. Medimart will endeavour to deliver your Order to you in accordance with the [Shipping Policy](#).
- 8.3 Medimart will try to ensure that all Goods are delivered in a prompt and timely manner. However, from time to time, it is possible that shipping and other factors outside of Medimart's control may result in delays. Medimart does not accept any liability for loss or damage suffered by anyone as a result of any such delays.
- 8.4 Large or bulky items of Goods are generally not held in stock and will be required to be ordered from Medimart suppliers. You agree that your Order for any large or bulky item of Goods may take up to eight (8) weeks to be delivered to you from the date you placed your Order. This timeframe is the average manufacturing procurement lead time required by suppliers. Medimart will contact you on receipt of your Order to notify you of the indicative delivery date.

- 8.5 For a Website Order you will be prompted to select whether you wish to collect your Order from a Medimart Store or to have the Order delivered to an address specified by you in accordance with the **Shipping Policy**.
- 8.6 For a Website Order the date of dispatch listed on the Website is the estimated date of dispatch as is reasonably estimated by Medimart. Where scheduled dispatch of a Goods is delayed by more than one week, you will be notified by e-mail via the e-mail address nominated in your Order.
- 8.7 Medimart will not deliver Goods to PO Box addresses.
- 8.8 Where you give written authority for Goods to be delivered without a signature, any and all included insurance cover will be voided.
- 8.9 The couriers or postal services nominated by Medimart will deliver Goods during local business hours (9am to 5pm, Monday to Friday).
- 8.10 Medimart is not responsible for the delivery times of Goods. Once Goods have been dispatched, it is your responsibility to liaise with the courier nominated by Medimart (as notified to you by Medimart) in relation to date and time of delivery. Medimart shall not be liable for any inaccuracy of information provided by you relating to the date and time of delivery.
- 8.11 Medimart reserves the right to not ship to remote or rural locations.

## 9. Ownership of Goods

- 9.1 You acknowledge that all property in and title and risk to the Goods, such as loss and damage, passes to you on delivery or collection (from a Medimart Store), as the case may be.

## 10. Damaged or Faulty Goods and Refund Policy

- 10.1 The Goods come with **Consumer Guarantees** that cannot be excluded under Australian Consumer Law.
- 10.2 If any Goods ordered by you arrives damaged or is not of acceptable quality on collection, you may have:
  - 10.2.1 rights under the **Refund, Returns and Repair Policy**;
  - 10.2.2 legal rights and remedies in Australia under Australian Consumer Law and other rights under other consumer laws applying in each Australian State and Territory; and/or
  - 10.2.3 to have the Good repaired or replaced or to receive a refund of the price paid by you for the Good.
- 10.3 Medimart will repair, replace or refund faulty or damaged Goods in accordance with this clause 10. If your Order arrives damaged, please contact the Customer Support Team.

## 11. Privacy and Personal Information

- 11.1 The privacy of your personal information is important to Medimart.
- 11.2 By placing your Order or otherwise contacting Medimart, you agree that: Medimart may store, process, use and disclose data collected from your Order for the purposes of processing and fulfilling your Order; and your data will be handled in accordance with the **Privacy Policy**.
- 11.3 The **Privacy Policy** available on the Website explains how your personal information is collected and managed in accordance with the Australian Privacy Principles in the *Privacy Act 1988* (Cth).

- 11.4 If Medimart merges, sells or otherwise change control of its business or the Website to a third-party, Medimart reserves the right, without giving notice or seeking consent, to transfer or assign the personal information, content and rights that Medimart has collected from you and any agreements it has made with you.

## 12. Disclaimer, Release and Indemnity

- 12.1 To the extent permitted by law, Medimart excludes all liability to you or anyone else for loss or damage of any kind (however caused or arising) relating in any way to the website including, but not limited to, loss or damage you might suffer as a result of:
  - 12.1.1 errors, mistakes or inaccuracies on the Website and at a Medimart Store;
  - 12.1.2 you acting, or failing to act, on any information contained on or referred to on the Website and/or any linked website and/or that available at a Medimart Store;
  - 12.1.3 death, personal injury or property damage of any kind resulting from your access or use of the Website or access to a Medimart Store;
  - 12.1.4 any wrongful or negligent act of omission by you;
  - 12.1.5 any unauthorised access to or use of the Websites secure servers;
  - 12.1.6 any interruption or cessation of transmission to or from the Website;
  - 12.1.7 any bugs, viruses, trojan horses or other harmful code or communications which may be transmitted to or through the Website by any third party;
  - 12.1.8 the quality or fitness for any purpose of any linked websites;
  - 12.1.9 your breach of any of these Terms and Conditions.
  - 12.1.10 any breach by you of this Agreement.
- 12.2 Except as expressly provided in this Agreement, and to the fullest extent permitted by the law, you will not pursue any claim against Medimart or hold Medimart liable for any fines, penalties, taxes and any exemplary, aggravated or punitive damages, liquidated damages or any indirect or consequential loss (including but not limited to loss of business, loss of revenue, loss of contract, loss of production, lost opportunity costs), legal costs and expenses (except reasonable legal costs awarded by a court) or performance by Medimart under this Agreement and arising out of your access to or use of the Website or a Medimart Store.
- 12.3 You will at all times indemnify, and keep indemnified, Medimart, including Medimart's directors, officers, employees and agents from and against any loss (including reasonable legal costs and expenses on a full indemnity basis) or liability incurred or suffered by you or by any of them arising from any claim, demand, suit, action or proceeding by any person against you or them where such loss or liability arose out of, in connection with or in respect of your conduct or breach of this Agreement.
- 12.4 This clause is not intended to exclude or limit any rights which you may have under Australian Consumer Law.

## 13. Disclosure

- 13.1 Medimart hereby notifies you that Medimart may:
  - 13.1.1 receive a rebate, commission or benefit (financial or otherwise) from a third party;

- 13.1.2 provide a rebate, commission or benefit (financial or otherwise) to a third party

in connection with the sale of Goods on the Website or at a Medimart Store.

13.2 You acknowledge and accept:

- 13.2.1 a rebate, commission or benefit (financial or otherwise) is or may be payable to Medimart from a third party in respect of a dealing or referral and the nature of any rebate, commission or benefit (financial or otherwise); and

- 13.2.2 you may refuse any referral, and you hereby give informed consent to any rebate, commission or benefit (financial or otherwise) received or which may be received by Medimart; and

- 13.2.3 you are hereby advised of any payments, rebate, commission or benefit (financial or otherwise) to Medimart from a third party.

13.3 You acknowledge and accept:

- 13.3.1 a rebate, commission or benefit (financial or otherwise) is or may be payable by Medimart to a third party in respect of a dealing or referral and the nature of any rebate, commission or benefit (financial or otherwise); and

- 13.3.2 you may refuse any referral, and you hereby give informed consent to any rebate, commission or benefit (financial or otherwise) provided or which may be provided by Medimart to a third party; and

- 13.3.3 you are hereby advised of any payments, rebates, commissions or benefit (financial or otherwise) from Medimart to a third party.

- 13.4 You acknowledge and by agreeing to these Terms and Conditions hereby consent to, and waive, and release any claims whatsoever for any conflict of interest in the sale of any Goods to you at all times.

#### 14. Credit Reporting

14.1 You authorise Medimart to:

- 14.1.1 obtain from a credit reporting agency a credit report containing personal information about you pursuant to section 18K(1)(b) of the *Privacy Act 1988* (Cth);

- 14.1.2 obtain a report from a credit reporting agency and other information in relation to your commercial credit activities;

- 14.1.3 in accordance with section 18N(1)(b) of the *Privacy Act 1988* (Cth), give to and obtain from any credit provider that may be named in a credit report issued by a credit reporting agency information about your credit arrangements, which may include information about credit worthiness, credit standing, credit history or credit capacity; and

- 14.1.4 use any credit information for the purposes of these Terms and Conditions (section 18L(4) of the *Privacy Act 1988* (Cth)) and in assisting you to avoid defaulting on its payment obligations, notifying credit providers of a default, and assessing credit worthiness.

#### 15. Corporate Authority

- 15.1 Each party hereby represents and warrants to each other party that if it is a corporate entity:

- 15.1.1 it is validly existing under the laws of its place of incorporation;

- 15.1.2 this Agreement has been properly authorised by

all necessary corporate or other action required by it;

- 15.1.3 it has full corporate power and lawful authority to perform or cause to be performed its obligations under this Agreement; and

- 15.1.4 this Agreement does not conflict with or result in the breach of or default under any provision of its constitution or any material term or provision of any agreement or deed or any writ, order or injunction, judgment, law, rule, or regulation to which it is a party or is subject or by which it is bound.

#### 16. Trust Authority

- 16.1 Each party hereby represents and warrants to each other party that if it has entered into this Agreement as the trustee of a trust (**Trust**):

- 16.1.1 the party is validly appointed as the trustee(s) of the Trust, is not in breach of its obligation as trustee and no circumstances exist pursuant to which it may be removed as trustee of the Trust;

- 16.1.2 this Agreement is in proper exercise of the powers of the party as trustee of the Trust and all formalities required by the trust deed of the Trust in connection with this Agreement have been complied with; and

- 16.1.3 the performance of this Agreement is for a proper purpose of and provides commercial benefit to the Trust.

#### 17. Force Majeure

- 17.1 If Medimart is unable at any time to perform any of its obligations whether wholly or partly by reason of any cause beyond its control (including without limitation, acts of God, inclement weather, strikes, lockouts, fires, riots, government order, infectious disease outbreaks (including but not limited to COVID-19), civil commotion or unrest, interference by civil or military authorities or act of war) Medimart may give written notice to that effect to you, giving full particulars of such force majeure in which case the obligations of Medimart under these Terms and Conditions shall, to the extent that they are affected by the force majeure, be suspended during the term of the force majeure. Medimart shall not be liable for any loss or damage suffered by the you as a result of any delays caused by such force majeure events.

#### 18. General

- 18.1 If any part of this Agreement becomes void or unenforceable, then that part will be severed with the intent that all remaining parts will continue to be in full force and effect.

- 18.2 The parties agree to the application of the laws of the State of South Australia and the parties agree to submit to the jurisdiction of the Courts of that State.

- 18.3 No delay or omission by a party to exercise any right, power or remedy available to that party under this Hire Agreement will impair any such right, power or remedy, nor will it be construed to be a waiver of that party's rights to take action or make a claim in respect of a continuing breach or default.

#### 19. Interpretation and Definitions

- 19.1 Headings are for ease of reference only and do not affect interpretation.

- 19.2 In this Hire Agreement, unless the context otherwise requires:

- 19.2.1 the singular includes the plural and vice versa, and a gender includes other genders;

- 19.2.2 another grammatical form of a defined word or expression has a corresponding meaning;
- 19.2.3 a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Agreement, and a reference to this Agreement includes any schedule or annexure;
- 19.2.4 a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- 19.2.5 a reference to A\$, \$A, dollar or \$ is to Australian currency;
- 19.2.6 a reference to time is to the capital city of the State time;
- 19.2.7 a reference to a party is to a party to this agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- 19.2.8 a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- 19.2.9 a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- 19.2.10 a word or expression defined in the *Corporations Act 2001* (Cth) has the meaning given to it in the *Corporations Act 2001* (Cth);
- 19.2.11 the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- 19.2.12 any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- 19.2.13 any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- 19.2.14 a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it; and
- 19.2.15 if a day on or by which an obligation must be performed, or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

19.3 In this Agreement, unless the context otherwise requires:

**Additional Charges** means the charges in addition to the Price recoverable in association with the sale of the Goods as set out in clause 7.

**Agreement** means these Terms and Conditions that apply to the ordering, purchase, fulfilment and delivery of Goods from Orders (from the Website or at a Medimart Store) together with the **Terms of Use of Website** (as applicable for a Website Order), **Competitive Pricing Policy**, **Refund, Return, Repair Policy**, **Shipping Policy**; and **Privacy Policy**.

**Australian Consumer Law** means the Australian Consumer Law which is contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

**Business Day** means any day (except Saturday and Sunday) on which banks are open for general banking business in the capital city of the State.

**Consumer Guarantees** means the consumer guarantees under Australian Consumer Law and noted on the Website.

**Goods** means any of items of product, equipment or stock including but not limited to medical, mobility and therapy products and any other associated accessories which are available for sale and purchase on the Website or at a Medimart Store.

**Medimart** means Medimart Group Pty Ltd (ACN 615970 646) and any Related Body Corporate.

**Medimart Store** means a retail store operated by Medimart and/or any Related Body Corporate.

**NDIA** means the National Disability Insurance Agency.

**NDIS** means the National Disability Insurance Scheme defined under the NDIS Act.

**NDIS Act** means the *National Disability Insurance Scheme Act 2013* (Cth).

**Participant** means an eligible participant under the NDIS Act.

**Payment Provider** means any one or more of the following as relevant in respect of payments of amounts under this Agreement in respect of a Participant for Supports as part of the hire of Equipment, being the:

- Participant;
- Plan Nominee;
- NDIA; or
- Registered Plan Management Provider.

**Plan Nominee** means a person who is appointed as the plan nominee of the Participant pursuant to section 86 of the NDIS Act

**Order** means an offer made by you in response to an invitation to treat made by Medimart via the Website (**Website Order**) or at a Medimart Store (**Medimart Store Order**) and as otherwise stated on a Tax Invoice.

**Registered Plan Management Provider** means a Registered Provider of Supports who is approved in relation to managing the funding for Supports under the NDIS Plan under section 70(1)(a) of the NDIS Act.

**Related Body Corporate** has the meaning given to it under the *Corporations Act 2001* (Cth).

**Supports** includes any other supports as permitted under the NDIS Act for the Participant.

**Website** means [www.medimart.com.au](http://www.medimart.com.au)

**you** means the any person, partnership, corporation, trust or other entity that visits the Website or accesses a Medimart Store.