Terms and Conditions - Sale of Used Equipment

1. Background

1.1 Medimart owns the Used Equipment which may be either superfluous for use in its business or no longer form part of Medimart's hire fleet.

1.2 You have represented to Medimart that you are desirous of purchasing the Used Equipment.

1.3 Medimart agrees to sell to you, and you agree to purchase, the Used Equipment for the Purchase Price and on the terms and conditions contained herein.

2. Application

2.1 These Terms and Conditions apply to the sale and, purchase fulfilment and delivery of Used Equipment from Medimart together with the:

2.1.1 **Terms of Use of Website**;

2.1.2 **Shipping Policy** (if applicable); and

2.1.3 **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 u making a purchase from a Medimart of Used Equipment.

2.2 These Terms and Conditions may be amended by Medimart at any time without notice. Purchases of Used Equipment following such amendment of these Terms and Conditions will represent an agreement by you to be bound by these Terms and Conditions as amended.

2.3 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.

2.4 No representations, inducements, promises or agreements between the parties will be of any force or effect in varying these Terms and Conditions.

3. Legal Capacity

3.1 You must be eighteen (18) years of age or over to purchase Used Equipment from Medimart.

3.2 Any Order and/or purchase of Used Equipment made by e is an acknowledgement by you that you:

3.2.1 are over the age of eighteen (18) years;

3.2.2 accept these Terms and Conditions;

3.2.3 agree that you have entered into a legal contract with Medimart in relation to these Terms and Conditions; and

3.2.4 these Terms and Conditions, together with your Order/purchase, constitute the entire agreement between you and Medimart for the supply of Used Equipment.

3.3 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.

4. Purchase

4.1 Medimart agrees to sell, and you agree to purchase, the Used Equipment in the quantities set out in the Order.

4.2 Once you have placed your Order, you cannot cancel or revoke your Order, unless expressly provided for in these Terms and Conditions.

4.3 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 collection or delivery of the Used Equipment.

4.4 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.

4.5 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.

5. Price

5.1 Prices shown on the Order and 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 Used Equipment cannot be varied except by agreement between you and Medimart in writing or by email.

6. Payment

6.1 All payments for an Order must be made in full prior to collection or 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 a 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 on demand, 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.

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 Used Equipment;

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 Used Equipment;

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 Used Equipment, 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. Inspection of Used Equipment

8.1 You are invited, urged and cautioned to inspect the Used Equipment prior to taking possession. The Used Equipment will be available for inspection at the Premises and times specified by Medimart.

8.2 The description of the Used Equipment you have been provided is based on the best information available to Medimart at that time.

8.3 To the extent permitted by law, Medimart makes no warranty, express or implied, as to the description of any of the Used Equipment.

8.4 The Used Equipment will be available for inspection at the relevant Medimart Store at times agreed by Medimart.

8.5 The Used Equipment may come with **Consumer Guarantees** that cannot be excluded under Australian Consumer Law.

8.6 If any Used Equipment ordered by you arrives damaged or is not of acceptable quality on collection, you may have legal rights and remedies in Australia under Australian Consumer Law and other rights under other consumer laws applying in each Australian State and Territory.

9. Hazardous materials

9.1 You are warned and you acknowledge that the Used Equipment you purchase may bear or contain hazardous substances, hazardous materials or hazardous waste which may be, or may become by chemical reaction or otherwise, directly or indirectly, hazardous to life, to health, or to property.

9.2 To the extent permitted by law, you hereby discharge and release Medimart from any and all liability directly or indirectly resulting from the presence of any hazardous substances, materials or waste including, but not limited to, any and all liability directly or indirectly resulting from Medimart's failure to give more specific warning with respect to individual items of Used Equipment or from the inadequacy of any warning.

10. Supply, Delivery and Collection of Used Equipment

10.1 Subject to you complying with these Terms and Conditions and acceptance of your Order by Medimart, Medimart will sell and supply the Used Equipment to you as shown on your Order and associated Tax Invoice

10.2 Unless otherwise agreed in writing, you are responsible for collecting the Used Equipment from the relevant Medimart Store.

10.3 You must give Medimart two (2) Business Days prior written notice before entering the relevant Medimart Store Premises to collect and load the Used Equipment or to perform dismantling work. We may deny you access to the relevant Medimart store if such notice has not been given.

10.4 You must not and cannot remove the Used Equipment from the relevant Medimart Store until the total Price (including GS) has been received by Medimart in full.

10.5 If you do not collect the Used Equipment from the relevant Medimart Stire at the time Medimart advises it is available for collection, you will be responsible for directly paying Medimart any and all storage fees if levied by Medimart.

10.6 The Used Equipment may not be available for immediate collection or delivery. If agreed, Medimart will endeavour to deliver your Order to you in accordance with the **Shipping Policy**.

10.7 Medimart will try to ensure that all Used Equipment is 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.

10.8 Medimart will not deliver Used Equipment to PO Box addresses.

10.9 Where you give written authority for Used Equipment to be delivered without a signature, any and all included insurance cover will be voided.

10.10 The couriers or postal services nominated by Medimart will deliver Used Equipment during local business hours (9am to 5pm, Monday to Friday).

10.11 Medimart is not responsible for the delivery times of Used Equipment. Once Used Equipment 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.

10.12 Medimart reserves the right to not ship to remote or rural locations.

10.13 You are responsible for all freight, shipping and other costs related to transporting the Used Equipment from the relevant Medimart Store including, but not limited to, any costs associated with certificates and/or permits required to move the Used Equipment across State, province and/or country borders.

10.14 Preparing, dismantling, loading, removal and transportation of the Used Equipment shall be at your sole expense, liability and risk.

10.15 Medimart makes no representation as to how the Used Equipment must be loaded or transported and you acknowledge that you will be liable for failure to comply with any road transport legislation or regulations or any other laws relating to the decommissioning, loading or carriage of the Used Equipment.

10.16 You must conduct your own investigations to ascertain the safe and proper method for loading and transporting the Used Equipment in compliance with all applicable state and federal laws and regulations

11. Ownership of Used Equipment

11.1 You acknowledge that all property in and title and risk to the Used Equipment, such as loss and damage, passes to you on the earlier of:

11.1.1 the time we indicate that the Used Equipment is available for collection by you;

11.1.2 collection by you (from a Medimart Store); or

11.1.3 delivery

as the case may be.

12. Use of Used Equipment

12.1 You acknowledge that you are not permitted to hire, rent or sell the Used Equipment and that when you no longer wish to use the Used Equipment, you must arrange for the Used Equipment to be recycled or destroyed.

12.2 All costs incurred in the recycling or disposal of the Used Equipment will be at your sole expense.

12.3 Your use of the Used Equipment must be for domestic and personal use only.

13. Privacy and Personal Information

13.1 The privacy of your personal information is important to Medimart.

13.2 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**.

13.3 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).

13.4 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.

14. Disclaimer, Release and Indemnity

14.1 The Used Equipment is provided and sold on an "**AS IS**" basis without representations or warranties of any kind whatsoever, express or implied, including, without limitation, non-infringement, merchantability or fitness for a particular purpose.

14.2 Medimart does not warrant that the Used Equipment will be functional, error free or that defects will be corrected.

14.3 Medimart makes no warranty that the Used Equipment will meet your requirements or expectations and Medimart expressly disclaims any warranties or guarantees that by selling the Used Equipment the Used Equipment will be suitable for any use or fit for any particular purpose.

14.4 No advice or information, whether oral or written, obtained by you from Medimart shall create any warranty.

14.5 Medimart will not accept return and/or refunds for Used Equipment under any circumstances. For the avoidance of doubt, the **Refund, Return and Repair Policy** does not apply to Used Equipment (only new purchases) from Medimart.

14.6 Except as expressly provided to the contrary in this Agreement, all guarantees, terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to this Agreement or its subject matter are excluded to the maximum extent permitted by law.

14.7 To the extent permitted by law, Medimart expressly 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:

14.7.1 errors, mistakes or inaccuracies on the Website and at a Medimart Store;

14.7.2 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;

14.7.3 death, personal injury or property damage of any kind resulting from your access or use of the Website or access to a Medimart Store;

14.7.4 any wrongful or negligent act of omission by you;

14.7.5 any unauthorised access to or use of the Websites secure servers;

14.7.6 any interruption or cessation of transmission to or from the Website;

14.7.7 any bugs, viruses, trojan horses or other harmful code or communications which may be transmitted to or through the Website by any third party;

14.7.8 the quality or fitness for any purpose of any linked websites;

14.7.9 your breach of any of these Terms and Conditions.

14.7.10 any breach by you of this Agreement.

14.8 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.

14.9 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.

14.10 You release Medimart from, and are liable for and indemnify Medimart against, all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against Medimart and any environmental loss, cost, damage or expense) in respect of:

14.10.1 personal injury;

14.10.2 damage to tangible property;

14.10.3 a claim by a third party;

14.10.4 defects in the Used Equipment,

and any other losses Medimart incurs in respect of your preparation, dismantling, loading, removal, transportation or use of the Used Equipment or your breach of this Agreement.

14.11 You indemnify Medimart for any loss Medimart may suffer (including actual and consequential loss of every kind and nature, known and unknown) as a result of your use of the Used Equipment, your breach of this Agreement or in any way which may be in breach of any law or regulation.

14.12 This clause is not intended to exclude or limit any rights which you may have under Australian Consumer Law.

14.13 Medimart's maximum aggregate liability for all claims under or relating to this Agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, based on fundamental breach or breach of a fundamental term or on any other basis, is limited to $100. Medimart will not be liable for any special, indirect, incidental or consequential damages, economic loss or damage, loss of profit or revenue, loss of production or production stoppage or loss of data under any circumstances.

15. Disclosure

15.1 Medimart hereby notifies you that Medimart may:

15.1.1 receive a rebate, commission or benefit (financial or otherwise) from a third party;

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

in connection with the sale of Used Equipment.

15.2 You acknowledge and accept:

15.2.1 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

15.2.2 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

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

15.3 You acknowledge and accept:

15.3.1 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

15.3.2 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

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

15.4 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 Used Equipment to you at all times.

16. Credit Reporting

16.1 You authorise Medimart to:

16.1.1 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);

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

16.1.3 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

16.1.4 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.

17. Corporate Authority

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

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

17.1.2 this Agreement has been properly authorised by all necessary corporate or other action required by it;

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

17.1.4 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.

18. Trust Authority

18.1 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**):

18.1.1 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;

18.1.2 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

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

19. Force Majeure

19.1 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.

20. General

20.1 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.

20.2 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.

20.3 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.

21. Interpretation and Definitions

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

21.2 In this Agreement, unless the context otherwise requires:

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

21.2.2 another grammatical form of a defined word or expression has a corresponding meaning;

21.2.3 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;

21.2.4 a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;

21.2.5 a reference to A$, $A, dollar or $ is to Australian currency;

21.2.6 a reference to time is to the capital city of the State time;

21.2.7 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;

21.2.8 a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;

21.2.9 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;

21.2.10 a word or expression defined in the *Corporations Act 2001* (Cth) has the meaning given to it in the *Corporations Act 2001* (Cth);

21.2.11 the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;

21.2.12 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;

21.2.13 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;

21.2.14 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

21.2.15 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.

21.3 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 Used Equipment as set out in clause 7.

Agreement means these Terms and Conditions that apply to the ordering, purchase, fulfilment and delivery of Used Equipment together with the **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.

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).

Order means an offer made by you in response to an invitation to treat made by Medimart for the sale and purchase of Used Equipment as stated on a Tax Invoice.

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

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).

State means South Australia, Australia.

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

Used Equipment means any of items of product, equipment or stock which were acquired, used, second hand or ex-hire equipment of Medimart including but not limited to medical, mobility and therapy products and any other associated accessories which are available for sale and purchase.

Website means **www.medimart.com.au**

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