

**Revision: A2019.07**

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Please read these Conditions carefully, as they set out Noventis and your legal rights and obligations in relation to services and goods supplied.

### **Definitions**

**“We, Us and Our”** refers to Noventis (ABN 69 391 696 533) having its registered office at 168 Canning Street, Carlton, Victoria 3053.

**“Customer”** means any organisation or business entity including a charity, government department, educational establishment, company, partnership, limited liability partnership, sole trader, unincorporated association or trust.

**“You, your”** means you, the Customer entering into the Contract.

**“Business Day”** means any week day, other than a national public holiday or public holiday in Victoria.

**“Booking”** means a timed appointment agreed in writing between you and Noventis for completion of Work.

**“Default Rate”** means rate equal to 2% above the rate fixed under section 2 of the Penalty Interest Rates Act 1983 (Vic) applicable as at the date of non-payment.

**“Materials”** means the materials (if any) supplied or to be supplied to you by Noventis under the Contract; GST has the meaning given to that term in the GST Law.

**“Electronic Document”** means an electronic form of a document satisfying the requirements of the Electronic Transactions (Victoria) Act 2000 (as amended);

**“Electronic Signature”** means an electronic form of identification satisfying the requirements of the Electronic Transactions (Victoria) Act 2000 (as amended);

**“Equipment”** means the equipment used by Noventis in the course of providing the Services;

**“Insolvency”** means, for a person, being in liquidation or provisional liquidation or under administration, having a controller (as defined in the Corporations Act) or analogous person appointed

**“Force Majeure Event”** means an event, or a series of related events, that is outside the reasonable control of the party affected (including power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, severe adverse weather conditions, riots, terrorist attacks and wars).



## **Terms of Sale (40 Sections)**

1. These terms apply in any contract of supply of goods or services made between us as supplier and you as buyer. Placing an order with us will constitute deemed acceptance by you of these terms.
2. We may change these terms without notice to you before we accept your order.
3. These terms prevail over any terms put out by you, unless we agree in writing.
4. No employees, agent or contractor of ours may vary or add to these terms without the prior written authority of our Managing Director.

### **Goods and Services**

5. We may alter our range of goods or services on offer without notice to you.
6. Goods we offer ex-inventory are subject to our prior sale to other buyers.

### **Orders**

7. An order you give us is subject to our acceptance and we may decline an order.
8. We reserve the right to supply an order in full or only in part.
9. You may not cancel an order, nor delay delivery, once we accept your order unless we agree.

### **Prices**

10. We will invoice all orders at our current prices, which may alter without notice to you.
11. All our quotations are strictly valid for 30-days after their issue date. Exemption can only be granted in writing by the Managing Director of Noventis.

### **Delivery**

12. Delivery times are estimates only and we do not guarantee a particular delivery date or time.
13. We may charge a delivery surcharge which will be outlined in our quotation.
14. We may deliver goods by instalment or progress payment, but if we fail to deliver a particular instalment by a date specified for delivery, you are not entitled to rescind the contract.
15. At your expense, you may cause the goods to be transported from our store to your premises. All carriers from our store will be your agents only.
16. A claim for shortages in delivery must be in writing received by us within 7 days of dispatch from our store.

### **Title and Risk**

17. Goods remain our property until you pay us the price in full for all goods we have sold to you. Until that time you are to hold our goods for us as owner and, if we require it, you are to store those goods in a way that they can be identified as our goods.
18. It is your responsibility to provide all information necessary to enable performance of the order and the Customer shall be responsible for any costs arising directly or indirectly from any error or omission in that information or delay in providing that information.
19. Risk in the goods passes from us to you on delivery.
20. If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising in connection with these Terms, you agree the following provisions of the PPSA will not apply to the enforcement of that security: sections 95, 96, 121(4), 125, 130, 132(3)(d), 132(4), 142 and 143.
21. Notices or documents required or permitted to be given to Noventis for the purposes of the PPSA must be given in accordance with the PPSA. You waive the right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.
22. You consent to Noventis effecting and maintaining a registration on the PPSA register (in any manner Noventis 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 Noventis making such registrations. You must notify Noventis at least 14 days before you change your name, Australian Company Number or Australian Business Number.
23. In this clause 23:



- A reference to goods includes proceeds and commingled property when the context permits. The goods will include 'other goods' as classified under the PPSA;
- Paid means receipt of cash or cleared funds by Noventis in full satisfaction of the Amounts Owing;
- PPSA means the Personal Property Securities Act 2009 (Cth) and any regulations made pursuant to it;
- The following words have the respective meanings given to them in the PPSA; account, ADI account, commingled, control, proceeds, register, registration, security interest and verification statement.

24. To the extent permitted by section 275 of the PPSA, you and Noventis agree to keep these Terms and all information related to them 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).

## Payment

25. You must pay us the price of the goods or services on delivery unless we have approved extended terms of payment. If payment is overdue, we may charge you interest at our banker's highest current overdraft interest rate from the date of default until we receive payment. Alternatively, in the case of default, we may enter your premises and retake possession of the goods concerned and then credit you our estimated re-sale value of those goods less our costs. You will indemnify us in relation to any costs incurred by us in the exercise of such rights.
26. In addition, if payment is overdue we may cancel or suspend delivery of other goods or services yet to be delivered to you.
27. You may not deduct from the price any set off, counter claim or other sum unless we agree in writing.
28. You must also pay to us an amount equal to the Goods and Service Tax (GST) on the goods at the prevailing rate at the time of paying the price of the goods.

## Returns

29. You may return goods to us only with prior written consent and at your expense. We will credit returns only where goods are received back by us in good condition. If you return goods to us because of your ordering mistake or for some reason other than the goods being defective, we may charge you a surcharge of 25% of the GST exclusive price of the goods plus any applicable GST.

## Consumer Rights

30. Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and to a compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
31. In addition to those rights, we will repair or replace or give you an allowance for defective goods which directly result from a manufacturing defect (materials or workmanship) in our goods, if we receive both the defective goods and written notice of the complaint together with a properly completed and signed claim form within 1 years of manufacture. You are to pay the cost of returning the defective goods to us. If the defective goods have already been used, we may choose not to replace them but to give you an allowance toward your purchase of replacement goods based on our estimate of the percentage wear of the defective goods when we receive them. If we replace or give you an allowance for defective goods, then the defective goods become our property. If we reject a claim we may dispose of the goods after 30 days unless you request us to do otherwise and at your expense. Materials and services purchased from other sources do not carry performance or other warranty.
32. If goods or services we supply are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the liability for breach of a condition or warranty of supply is limited to:
- in the case of goods:
    - The replacement of the goods or the supply of equivalent goods;
    - The repair of 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.
  - in the case of services:
    - The supplying of the services again; or
    - The payment of the cost of having the services supplied again as we may decide.



33. Goods of a consumable nature are not covered by the warranties, such as batteries, filters, barriers, sinters, pump-diaphragms and any other items.
34. We do not give any other warranty or condition of our supply.

#### **Product Recall**

35. If we decide to voluntarily recall any goods, then we will be responsible for the costs of transport, repairs or replacement for the goods recalled.

#### **Our Remedies**

36. If you breach any contract with us, or if you are an individual and commit an act of bankruptcy under the Bankruptcy Act, or if you are a company and become an externally administered body corporate under the Corporations Law, we may (in addition to our other rights) suspend or terminate any other contract with you by giving written notice to you. You are still to pay us for goods or services already delivered under the contract in question.
37. In addition to those rights, if you default or become insolvent we reserve our rights as seller under the Sale of Goods Act of the relevant jurisdiction.

#### **Jurisdiction**

38. All contracts between us shall be deemed to be made, construed and to be enforceable in and according to the laws of the State of Victoria and by mutual consent to be subject to the exclusive jurisdiction of the Courts of Victoria.

#### **Disclaimer**

39. We shall not be liable for any technical, editorial, typographical or other errors or omissions within the information provided our offers and submissions. It's the customer's responsibility to investigate whether the offered materials and advice are suitable for their application. No warranty, whether express or implied is given in relation to such materials.

#### **Privacy**

40. You must observe the Privacy Act if it is applicable in respect of all personal information and indemnify us against all loss, cost, expense, damage or liability suffered if you breach this clause.