

**Becton Dickinson Limited**

(GST No. 66-998-150)

14B George Bourke Drive

Mt Wellington

Auckland New Zealand 1060

**Application for Account**

CUSTOMER DETAILS (PLEASE USE BLOCK LETTERS)

|  |  |
| --- | --- |
| Nature of Business: Choose an item. | (if other please specify) Click here to enter text. |

|  |  |  |  |
| --- | --- | --- | --- |
| Business Name: | | Trading As: | |
| Click here to enter text. | | Click here to enter text. | |
| GST No. : | Click here to enter text. | NZCO: | Click here to enter text. |

|  |  |
| --- | --- |
| Billing Name and Address: | |
| Name | Click here to enter text. |
| Street | Click here to enter text. |
|  | Click here to enter text. |
| Suburb | Click here to enter text. |
| State | Click here to enter text. |
| Post Code | Click here to enter text. |
| Country | Click here to enter text. |

|  |  |
| --- | --- |
| Delivery Name and Address: | |
| Name | Click here to enter text. |
| Street | Click here to enter text. |
|  | Click here to enter text. |
| Suburb | Click here to enter text. |
| State | Click here to enter text. |
| Post Code | Click here to enter text. |
| Country | Click here to enter text. |
| Special Delivery Instruction | Click here to enter text. |

**Application for Account (Continued)**

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| --- | --- |
| Primary Contact at BD: | |
| Name | Click here to enter text. |
| Title | Click here to enter text. |

Contact Details

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Purchasing | Name : | Click here to enter text. | | |
|  | Telephone : | Click here to enter text. | Facsimile : | Click here to enter text. |
|  | Email : | Click here to enter text. | | |
| Accounts Payable | Name : | Click here to enter text. | | |
|  | Telephone : | Click here to enter text. | Facsimile : | Click here to enter text. |
|  | Email : | Click here to enter text. | | |
|  | | *(Group Mail Box Preferred)* | | |

Orders, Invoices and Statements Delivery details (*Group Mail Box Preferred*)

|  |  |
| --- | --- |
| Order Acknowledgements email | Click here to enter text. |
| Invoice Delivery email | Click here to enter text. |
| Statement Delivery email | Click here to enter text. |

Details of Sole Trader/Partners/Directors or Trustees

|  |  |  |  |
| --- | --- | --- | --- |
| Name | Click here to enter text. | Name | Click here to enter text. |
| Address | Click here to enter text. | Address | Click here to enter text. |

Trade References (*please provide 3 current references*)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1 | Company Name | Click here to enter text. | | |
|  | Contact Name | Click here to enter text. | Telephone | Click here to enter text. |
|  | Email | Click here to enter text. | | |
| 2 | Company Name | Click here to enter text. | | |
|  | Contact Name | Click here to enter text. | Telephone | Click here to enter text. |
|  | Email | Click here to enter text. | | |
| 3 | Company Name | Click here to enter text. | | |
|  | Contact Name | Click here to enter text. | Telephone | Click here to enter text. |
|  | Email | Click here to enter text. | | |

**Application for Account (Continued)**

**Estimated Annual Purchases NZD$** : Click here to enter text.

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| Comment: Click here to enter text. |

ACKNOWLEDGEMENT (**please refer to the BD and/or CareFusion Trading Terms prior to Signing**)

Privacy Act

The information provided by the Applicant on this Commercial Credit Application will be used by Becton Dickinson Group (ANZ) for the granting of commercial credit and any resulting transactions. The Applicant, its directors gives consent and unconditionally grants Becton Dickinson Group (ANZ) to obtain from a credit reporting agency, information and / or reports concerning it from time to time during the continuance of its credit account so as to assist Becton Dickinson in deciding whether to grant credit or to continue to grant credit to it or for collecting overdue payments in respect of commercial credit applied for or provided to it.

If required by law, the Applicant authorises and grants consent to Becton Dickinson Group (ANZ) to obtain and disclose information about its credit worthiness to and from credit reporting agencies (including identifying the particulars and details of overdue payments) who have or are or intend to enter into commercial or business dealings with it and / or grant credit to it and collection agencies for use in the collection of payments due to Becton Dickinson. For the purpose of this paragraph, report and information includes any credit report originating from a credit reporting agency or any other record or information that has any bearing on the Applicant’s credit worthiness, credit standing, credit history and credit capacity.

|  |  |  |  |
| --- | --- | --- | --- |
| Signature of Authorised Signatory: |  | Signature of Authorised Signatory: |  |
| Authorised Signatory’s Name: |  | Authorised Signatory’s Name: |  |
| Title: |  | Title: |  |
| Date: |  | Date: |  |

The following terms govern the sale of goods by Becton Dickinson Limited (“BD”) to you. These terms prevail over any terms in your documents or terms stated by you when placing an order. When you place an order for goods, accept delivery of goods, make a payment or comply with these terms, you are taken to have accepted them. Current terms are displayed at [www.bd.com/anz](http://www.bd.com/anz), or otherwise available upon request.

1. **Applicability.**

These Trading Terms shall apply to all Contracts between BD and Customer. Subject to clause 24, conflicting or additional terms of sale and in particular, stipulations in Customer’s Purchase Orders, shall form part of the Contract only if they have been expressly agreed by the parties in such Contract.

1. **Establishment of a Contract.**
   1. Each sale or quotation made by BD (if any) is made without obligation as to supply of specific products or services by BD, except when and insofar as BD has explicitly stated otherwise in writing. A quotation for any products or services is only a price estimate and shall not constitute an offer. Unless otherwise stated on the quotation, a quotation shall only be valid for a period of 30 days from its date of issue by BD. Any products or services to be supplied by BD as agreed between the parties as a result of a quotation will be deemed to incorporate these terms, and the supply of those products or services will be governed by the terms and conditions set out in these terms.
   2. Customer shall order Products from BD by submitting a Purchase Order identifying the type and quantity of Products it wishes BD to supply, the requested delivery date(s), and such other information as BD may request.
   3. All Purchase Orders are subject to acceptance by BD. Any accepted Purchase Order is subject to the terms of these terms to the exclusion of any terms which are implied by trade, custom, practice or course of dealing, and any Customer standard terms and conditions attached to such Purchase Order shall be specifically excluded. BD shall have no liability to Customer with respect to Purchase Orders that are not accepted by BD.
   4. Any changes and/or partial cancellation or complete cancellation of an accepted Purchase Order by Customer can take place only with the consent of BD made in writing and BD reserves the right to charge to Customer and the Customer agrees to pay any costs incurred relating to the alteration or cancellation of any Purchase Order or part thereof.
2. **Minimum Order Quantity.**

It is our policy to supply customers with case pack, minimum order quantities. Please refer to the details in the BD price list for minimum quantities. Due to increased handling costs, all orders below the net value of $350.00 (exclusive of GST) will incur a $35.00 (+ GST) handling charge.

1. **Description of Products.**
   1. The description of the Products shall be as set out in BD’s quotation or acknowledgement of order. All samples, drawings, descriptive matters, and advertising issued by BD and any descriptions or illustrations contained in BD’s catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the products described in them. They do not form part of these terms and this is not a supply by sample.
   2. Any discussion between the parties of BD’s vision for future products or versions of products is not a guarantee by BD that such future products or versions will be developed, sold or otherwise made available by BD. Customer understands and agrees that the Products provided under these terms are not contingent on any such future products or versions becoming available. Should such products or versions become available, Customer and BD may enter into a separately negotiated contract at that time.
2. **Price and Payment.**
   1. Unless otherwise agreed between the parties in writing, all prices for Products quoted by BD exclude delivery and handling charges, and all taxes, levies and other government charges imposed for the provision of the Products and Services (including goods and services tax GST), which shall be borne by Customer. In addition to paying the prices for the products or any other consideration under or in connection with the terms, you must pay to BD an amount equal to any GST payable on any supply of products by BD.
   2. Unless otherwise specified on the applicable invoice, all invoices are to be paid: (a) net with no deduction whatsoever (whether by way of set-off, counterclaim, discount, abatement or otherwise); and (b) within thirty (30) days after the date of the invoice unless otherwise approved in writing by BD’s Managing Director or Financial Controller. Insofar as the Customer has reached or exceeded a credit limit established hereunder, BD shall be permitted to request payment by Customer prior to the delivery of additional Products.
   3. BD reserves the right, in the event of payment in full not being received within 7 Business Days after the due date for payment of an invoice, to: (a) require the payment prior to the delivery of any further Products or Services; (b) charge default interest at the rate of 12% per annum on all overdue amounts calculated on a day to day basis for any monies due and unpaid or, if lower, the maximum interest rate allowed to be charged on overdue amounts under applicable law; (c) cease any further deliveries to the Customer and cancel any unfulfilled Purchase Order; and/or (d) demand the return of any Products for which payment in full has not been received, pursuant to the procedure specified in clause 7.2 below.
   4. BD shall have the right from time to time to assess the creditworthiness of the Customer. To enable BD to do so, Customer shall, upon BD’s reasonable request, provide such information, documentation, and assurances as BD may require. BD may, in its sole discretion, increase or decrease the amount of credit or vary the credit terms that BD has extended to the Customer in connection with the supply of Products and/or Services.
   5. Each Product and/or Service, as separately priced in these terms and for which payment may be sought by BD in one or more invoices, is a separate and independent obligation of BD to deliver and Customer to pay.
3. **Invoice Discrepancies**

You must notify your BD Customer Service Representative, or Accounts Receivable Officer, within 14 days for receipt of invoice regarding any amounts under dispute or requiring clarification.

1. **Delivery; Resupply of Goods, Product Upgrades** 
   1. Any delivery dates indicated by BD are based on conditions prevailing at the time the specific Purchase Order is placed by Customer and under the assumption of normal supply and manufacturing conditions. Time of delivery is not of the essence and except in the event of gross negligence or willful misconduct of BD, BD shall not be liable for any delay in the supply of Products or Services to Customer. Unless otherwise expressly agreed, partial delivery and combined shipments of Products shall be permitted.
   2. Unless the Customer notifies BD to the contrary within 14 Business Days after delivery of the Products to the Customer, the Products shall be deemed to have been accepted by the Customer as being in accordance with the Contract and as being in good condition (based on visual inspection). The Customer shall not be entitled to withhold payment of all or any of BD's invoices under which payment is due while any corresponding claim to the contrary is being investigated by BD.
   3. To the extent that implementation activities are required, a Product shall be deemed accepted by Customer (“Accepted”) when the implementation activities regarding the Product have been completed and the Product functions in accordance with the material specifications of its user manual, notwithstanding that the Customer may not have executed an Equipment Confirmation Form for the Product on the date that the Product is Accepted.
   4. The Customer accepts and agrees that Products ordered under the same Purchase Order may be delivered to Customer in one or more batches on one or more dates. BD reserves the right to issue separate invoices for each batch of Products delivered to the Customer.
   5. If BD agrees with Customer that, upon delivery, the Products do not meet the descriptions set out in the Schedules and/or are not in good condition (based on visual inspection), BD shall, at its sole option and at no additional expense to the Customer, take back, replace and/or repair such Products.
   6. It is the intention of BD to despatch orders or stock items within 48 hours from receipt of order. BD is not liable for any failure to supply the goods at the delivery time quoted on any ground including negligence by BD or its agents. BD may make partial deliveries. BD may decline to accept an order or may cancel an order in its absolute discretion.
   7. Urgent orders requiring goods and services outside our specified turnaround times will bear any additional costs of the delivery. Urgent orders should be communicated by telephone, at first instance, to your BD Customer Service Representative.
   8. BD is not liable to you for any failure to comply with these terms if the failure (directly or indirectly) arises out of any circumstances which are not within BD's reasonable control.
   9. Any concern as to the expiry period remaining on goods received must be conveyed to BD within 14 days from receipt of goods. Under no circumstances will BD accept the return of stock which has expired, or has less than three (3) month’s shelf life unless prior agreement has been arranged.
   10. Risk of damage to, or loss of, the goods passes to you upon delivery. Title to the goods does not pass to you until payment in full is received by BD.
   11. You are not authorised to resell, resupply or distribute, or to authorise or permit any other person to resell, resupply or distribute, any goods supplied by BD unless you have first entered into a formal, written distribution agreement with BD, in which case your dealings with the goods will be governed by the terms of that agreement and these trading terms. You must indemnify BD, its directors, employees and agents against all loss, damage and liability (including legal costs and expenses) incurred by BD, its directors, employees and agents arising out of or relating to any such unauthorised resale, resupply or distribution.
   12. Shipping – Orders are shipped via a transportation mode selected by BD. If a customer specifically requests urgent delivery outside the normal BD delivery plan, the freight charge will be added to the invoice.
2. **Return of Goods** 
   1. Nothing in these terms are intended to exclude, restrict or modify the implied warranties set out in the Consumer Guarantees Act 1993.
   2. No goods will be accepted for return or credit unless prior approval has been received from your BD Customer Service Representative.
   3. Application for return of goods must be made within 14 days from receipt of goods. No goods will be accepted after 21 days from authorisation date.
   4. You will be allocated a Return Material Authority (RMA) reference number by BD's Customer Service Representative. This RMA reference number must be shown on all returns. All returns are to be sent to the BD Warehouse as directed by our Customer Service Department.
   5. Please ensure that the RMA reference number is clearly marked on all goods for return. Goods will only be accepted for return where prior approval has been obtained and the RMA reference number is clearly shown. Only authorised quantities and batch numbers will be accepted. Any unauthorised goods returned will be redirected to you at your expense. Goods must be returned in their original packaging with no additional markings or damage. Any goods not meeting this requirement will be refused credit.
      1. An RMA will not be issued, nor will credit be given for the following:
      2. Goods that are not purchased from BD or through an Authorized Distributor;
      3. Goods which require to be stored below 25ºC, including but not limited to BD E-Z Scrub 747 Surgical Brush/Sponge and Nail Cleaner, BD PosiFlush SP Pre filled Saline Syringe and BD PosiFlush XS Pre-filled Saline Syringe;
      4. Goods returned with conditions that prevent resale. Examples include but not limited to:
      5. Special ordered or custom made Goods;
      6. Obsolete or discontinued Goods;
      7. Opened Goods;
      8. Expired Good or Goods outside minimum dating requirements.
   6. Application for credit because of short shipment/damaged goods/over shipment of goods must be made within 14 days from receipt of goods. If you have not made an application within this time you will be deemed to have accepted the shipment and you cannot make any further claims. If there is an over shipment, you must immediately inform BD in writing and BD is entitled to, at your option, charge you for the excess goods or recover the excess goods from you.
   7. Only BD minimum order quantities will be considered for return, (i.e. no part cases will be accepted)
   8. If a product is believed to be faulty, goods should be isolated and BD's Customer Service Department should be advised of the alleged fault. A sample from the batch concerned will be evaluated by the Quality Assurance Dept. and if found to be faulty, an RMA number will be provided.
   9. Non Stock items ordered at customer request will not be accepted for return. Should any order be cancelled after the items have been manufactured including shipping, all charges will be billed to you.
   10. Refrigerated, frozen, or products requiring a special license to transport (eg 'hazmat' products) should not be returned physically to BD. Any claim for credit relating to BD supply of such goods should be notified to your BD Customer Service Representative within 14 days of receipt.

**IMPORTANT:** Goods will only be accepted for return if the above conditions are complied with. A re-stocking fee of $60.00 (+GST) will be charged if the returned goods were ordered in error.

1. **Goods with Expiry Dates** 
   1. Any concern as to the expiry period remaining on goods received must be conveyed to BD within 14 days from receipt of goods. Under no circumstances will BD accept the return of stock which has expired, or has less than three (3) month’s shelf life unless prior agreement has been arranged.
2. **Retention of Title and Risk**
   1. Unless otherwise agreed in the Contract title to delivered Products shall pass to the Customer only after it has paid for those Products in full. Until such payment has been made, the Customer shall be entitled to use the Products and shall: (a) hold the Products on BD’s behalf (as bailee, fiduciary agent or similar); (b) store each Product in a manner which clearly distinguishes the Products from products owned by the Customer or which are otherwise in the Customer's possession; and (c) mark and document the same in such a manner as to make the Products clearly identifiable as BD's property to ensure that, to the extent permitted under applicable law, the Products cannot be seized in case of bankruptcy, default in payments or other similar circumstances that may apply to Customer from time to time.
   2. In the event that the Customer fails to make payment of invoices when they fall due, being 30 days from date of invoice, BD may require Products to which the unpaid invoices relate to be returned on demand. If the Customer does not ship the Products to BD within 48 hours of receipt of the demand (or such other timeframe as is specified by BD), Customer shall make available to BD, at Customer's expense, such Products for the purpose of recovery by BD.
   3. Unless specific delivery terms are indicated and agreed in the Contract, risk in the Products shall pass to the Customer immediately upon delivery to the Customer or to the Customer’s carrier, if so appointed by the Customer.
3. **Personal Property Securities Act 1999**
   1. BD's interest in any Products supplied to the Customer will be a security interest for the purposes of the Personal Property Securities Act 1999 ("**PPSA**").
   2. The Customer agrees to do anything required by BD, at the Customer's cost, to: (a) ensure the Products supplied to the Customer are subject to effective security; (b) ensure that any security interest that BD has or is deemed to have in any Products supplied is perfected (including by registration of a financing statement; (c) ensure BD has the priority it requires; and (d) secure to BD the full benefit of the provisions of this agreement.
   3. The security interest created over the Products under this clause will attach to the proceeds of any sale of the Products by the Customer.
   4. The sale of the Products will not extinguish the security interest held by BD over the Products unless and until the Customer pays to BD all monies owing to BD in respect of the Products.
   5. If the Customer resells the Products before title to those Products has passed to the Customer, or if the Customer uses the Products in a manufacturing process of its own or some third party, the proceeds shall be received and held by the Customer (in whatever form) on trust for BD. BD's interest as a beneficiary under that trust will be that portion of the proceeds which does not exceed the amount owing by the Customer to BD. The balance of the proceeds (if any) will be the Customer's beneficial interest under the trust. BD may at any time by notice in writing require the Customer to convert the proceeds into money to be paid into a bank account nominated by BD.
4. **Force Majeure**
   1. Neither party shall be liable for any non-fulfilment of its obligations under these terms resulting from a Force Majeure Event.
   2. A party claiming a right to be excused from performance due to a Force Majeure Event shall immediately provide notice to the other party of the extent of its inability to perform and of the contingency that prevents performance.
   3. In the event a party cannot perform its obligations under these terms for more than 90 days due to a Force Majeure Event, either party may cancel the applicable purchase order or Contract with immediate effect by giving written notice to the other party.
5. **Warranty**
   1. BD warrants that it has clear title to the Products and that the Products shall be delivered to Customer free of liens and encumbrances.
   2. The other warranties provided by BD in respect of the Products and Services (if any) are set out in the Warranty Schedule.
   3. Warranty only applies to the extent permitted by law and are only intended to exclude or limit the rights which the Customer may have under the Australian Consumer Law ("ACL") and any equivalent legislation to the extent permitted by law.
6. **GST**
   1. In this clause:
   2. **GST Amount** means the amount calculated by multiplying the monetary consideration payable by the recipient (excluding the amount payable as GST) for the relevant taxable supply by the prevailing GST rate;
      1. **GST Supplier** means a party making a supply of goods or services to another party; and
      2. **GST Recipient** means a party receiving a supply of goods or services from another party.
   3. Terms defined in the GST Act have the same meaning when used in this clause, or in the definition of GST Amount, unless expressly stated otherwise.
   4. Unless expressly stated otherwise, any sum payable or amount used in the calculation of a sum payable under these terms has been determined without regard to GST and must be increased, on account of any GST payable under this clause.
   5. If a GST Supplier makes a supply to a GST Recipient in connection with these terms and any GST is payable on that supply, the GST Recipient must pay the GST Amount to the GST Supplier on the earlier of:
      1. the time of making payment of any monetary consideration on which the GST is calculated; and
      2. the issue of an invoice relating to that taxable supply.
   6. The GST Recipient must pay the GST Amount in the same manner as making payment of any monetary consideration on which the GST is calculated and the GST Supplier must provide to the GST Recipient, as a precondition for payment by the GST Recipient of the GST Amount, a tax invoice or a document that the Commissioner of Taxation will treat as a tax invoice.
   7. If an adjustment event varies the amount of GST payable by the GST Supplier in respect of a supply under these terms, the GST Supplier will adjust the amount payable by the GST Recipient to take account of the adjustment event. Any payment will be made by the GST Recipient to the GST Supplier or by the GST Supplier to the GST Recipient within 10 Business Days of the GST Supplier becoming aware of the adjustment event. Adjustment under this clause is deemed to be an increase or decrease (as appropriate) of the additional amount payable under clause 10.3. The GST Supplier will issue an adjustment note to the GST Recipient within 10 Business Days of becoming aware of the adjustment event.
   8. Where there has been an overpayment in respect of GST, the GST Recipient shall only be required to refund the overpayment amount if the GST Recipient is entitled to a refund of the amount from the Commissioner of Taxation.
   9. The amount recoverable on account of GST under this clause by the GST Supplier will include any fines, penalties, interest and other charges incurred as a consequence of late payment or other default by the GST Recipient under this clause.
   10. If either party is required to pay, reimburse or indemnify the other for the whole or any part of any cost, expense, Loss, liability or other amount that the other party has incurred or will incur in connection with these terms, the amount must be reduced by the amount for which the other party can claim an input tax credit, partial input tax credit, or other like offset.
   11. The GST Supplier must do all other things reasonably requested by the GST Recipient to enable the GST Recipient to obtain any input tax credit to which it is entitled pursuant to the GST Act.
7. **Limitation of Liability**
   1. To the extent permitted by law, BD’s total liability hereunder shall not exceed the total price paid for the Products or Services to which the liability relates and shall not extend to any incidental, consequential, indirect, special or contingent Loss of any description, whether arising out of warranty, contract, tort or otherwise including: (a) any missed gain or opportunity, commercial damage, loss of turnover or profits, loss of customers, loss of any opportunity, loss of anticipated savings and like financial losses; (b) damage to Customer’s reputation or image; (c) loss of data; and (d) costs of any regulatory fines or termination of business. For the avoidance of doubt, any limitation on BD’s liability hereunder only operates to the extent permitted by law, and nothing in these terms shall purport to exclude, restrict or modify, or have the effect of excluding, restricting or modifying, any condition or warranty implied by applicable legislation where to do so would have the effect of rendering these terms, or any part of it, void or otherwise unenforceable. In particular, nothing in these terms shall limit or exclude BD's liability for: (a) death or personal injury caused by its gross negligence, or the gross negligence of its employees, agents or subcontractors (as applicable); or (b) willful misconduct, fraud or fraudulent misrepresentation.
8. **Product Safety**
   1. Customer shall procure and ensure that: (a) the Products are used only for the purposes and in the manner for which they were designed and supplied; (b) all persons likely to use or come into contact with the Products receive appropriate training and copies of applicable instructions and documents; (c) all third parties who use or may be affected by or rely upon the Products are given full and clear warning of any hazards associated with them or limitations of their effectiveness; (d) safe working practices are adopted and complied with; (e) any warning notices displayed on the Products are not removed or obscured; and (f) where the use of the Products is stated to be subject to any instructions or warnings, they are used on the condition that such instructions or warnings will be strictly adhered to; and (g) it applies and follows any and all field safety corrective actions required by BD.
9. **Product Modification**
   1. BD shall have the right, at any time, to make modifications to any of the Products (including Products that have already been delivered to Customer and are in use), which do not materially affect form, fit or function of such Products or which are required by applicable law or which are necessary to comply with applicable standards or safety criteria. If such a modification would have a material effect on a Product, BD shall have the right to make the modification but it shall use commercially reasonable efforts to give Customer reasonable notice of such modification and in any case, such notice period shall comply with the requirements of applicable law.
10. **Internal Use and Export Controls**
    1. The Products are not intended for resupply by Customer unless otherwise specified by BD in writing. BD disclaims all liability in respect of any resupply of the Products by the Customer and in respect of the Products resupplied, and the Customer hereby indemnifies and holds BD harmless against all Loss relating to any unauthorised resupply of the Products by the Customer. The Customer further warrants that the Products (including any related technical data) will not be exported, sold, supplied or otherwise diverted outside the country in which delivery of the Products takes place in contravention of applicable law.
    2. Unless agreed otherwise between the parties in writing, the Customer agrees to take and accepts full responsibility for, and cover the costs of, the disposal of the Products, and to perform such disposal in accordance with applicable law.
11. **Intellectual Property Rights**
    1. Customer acknowledges that all Intellectual Property Rights in or in respect of the Products will at all times remain the property of BD, its Affiliates or any applicable third party owner and Customer shall acquire no right, title or interest in the same. Any Software supplied with the Products is supplied for use only in connection with the Products supplied by BD and the Customer shall not reproduce or permit the reproduction of such Software in any form without the prior written consent of BD. All Software is supplied subject to the Software Schedule.
    2. In the event the Customer becomes aware that BD’s Intellectual Property Rights may be or have been infringed, Customer undertakes to inform BD thereof as quickly as possible and to provide any support requested by BD in order to assist it to take the measures necessary to protect its rights.
    3. Unless the parties expressly agree otherwise in writing, but without prejudice to Customer’s right to use the Products for the purpose and in the manner for which they were supplied, BD’s Intellectual Property Rights may not be used or exploited in any way whatsoever by the Customer. In particular, but without limiting the foregoing, Customer shall not use or make reference to BD’s logos, brands or any of the names and trade marks (whether registered or not) under which BD or the Products are known without the prior written consent of BD.
    4. Customer shall provide notice to BD promptly after Customer receives actual notice of any demand, claim, suit or proceeding against Customer that contends that a Product infringes any patent, trade mark, copyright, trade secret or other intellectual property right of a third party (“Infringement Claim”). In that event, Customer shall authorise BD to have sole control of the defence and/or settlement of each Infringement Claim. Upon BD’s request and at BD’s cost, Customer shall provide all necessary and reasonable cooperation in the defence and/or settlement of the Infringement Claim. Customer shall not make any admission as to liability or agree to any settlement or compromise of an Infringement Claim without BD’s prior written consent. Subject to this clause 15, BD shall indemnify the Customer against all liabilities, costs, expenses, damages and losses incurred by Customer directly as a result of any award or settlement made in respect of an Infringement Claim provided Customer complies with its obligations in this clause 15.4. BD shall have no obligation or liability of any kind to Customer regarding an Infringement Claim if the Infringement Claim arises from Customer’s use of the Product in breach of these terms.
    5. In the event of an Infringement Claim or if BD determines or receives notice that a Product may infringe or does infringe any third party’s intellectual property rights, BD may, at its option: (a) replace the Product with a substantially equivalent product; (b) modify the Product in a manner that does not substantially affect the performance of the Product; or (c) credit Customer for the value of the Product in exchange for its return. An Infringement Claim shall give rise to no rights for the Customer other than those set out in this clause 15.
12. **Confidentiality**
    1. Each party will use Confidential Information of the other party only as necessary to perform its obligations under these terms, and will not disclose it to any third parties except as reasonably required by any governmental authority, court, regulatory body or applicable law. The receiving party may disclose Confidential Information to the receiving party’s directors, employees and agents: (a) only to the extent such disclosure is reasonably necessary for the purpose of carrying out that party's obligations under these terms; and (b) provided the directors, employees and agents (as applicable) are obligated to maintain the Confidential Information in confidence for at least as long as the period that the receiving party is obligated not to disclose the Confidential Information hereunder.
    2. The receiving party will take all reasonable measures necessary to maintain the confidentiality of the other party's Confidential Information and to keep such Confidential Information secure and protected against theft, damage, loss or unauthorised access, including using the same degree of care with which the receiving party protects its own like Confidential Information. The receiving party shall notify the disclosing party in writing of any misuse or misappropriation of the disclosing party's Confidential Information which may come to the receiving party’s attention.
    3. The obligations of confidentiality arising under this clause 16 will not apply to any Confidential Information which has: (a) entered the public domain, except where such entry is the result of the receiving party’s breach of confidentiality obligations under this clause 16; (b) been lawfully received by the receiving party from a third party on an unrestricted basis; (c) is known to the receiving party prior to disclosure by the disclosing party; (d) has been independently developed by the receiving party; or (e) is required to be disclosed by law or the rules of a stock exchange.
    4. Customer hereby agrees that it shall be responsible for obtaining and providing BD with information relating to Customer's employees who use or maintain (or who will use or maintain) the Products and written consent for BD to use or process their professional contact details such as name, role, phone and fax numbers, and mail and email addresses, for the purposes of installing and servicing the Products and performing the Services, as well as surveying customer satisfaction. Except as otherwise required by applicable law, such data will be retained by BD for the duration of Customer’s service requirements under these terms or until Customer notifies BD in writing of its wish to change or withdraw it, whichever is sooner. Customer shall be responsible for processing and disclosing to BD all personal information relating to such employees and shall be liable under applicable privacy and data protection laws and regulations in respect of such processing and disclosure. Without limitation, Customer shall provide all requisite information and notices to employees and otherwise comply with all requirements under such privacy and data protection laws and regulations in connection with its obligations under this clause 16.4. Any such processing or storage of personal information by BD on behalf of Customer shall be subject to the Data Protection Schedule.
13. **Privacy and Data Security** 
    1. The Customer warrants that:
       1. all Personal Information collected, used, disclosed or otherwise transferred by Customer through the use of or access to the Products and/or Services if applicable, by end-users and all Personal Information relating to the Customer's employees who use or maintain (or who will use or maintain) the Products and/or Services if applicable (collectively "**Data**") will be collected, used, held, disclosed and/or otherwise transferred by Customer to BD in accordance with the Privacy Legislation and all other applicable laws; and
       2. the individuals to whom the Data relates: (a) have each been made aware of the identity of BD and the existence of BD's Privacy Policy; and (b) have each consented to the Data being collected, used, held and disclosed by BD in accordance with BD's Privacy Policy.
    2. Without limiting clause 17.1, the Customer hereby agrees that it shall be responsible for obtaining and providing BD with information relating to Customer's employees who use or maintain (or who will use or maintain) the Product and/or Services if applicable and warrants that written consent has been or will be obtained for BD to use or otherwise access their Personal Information, including without limitation, professional contact details such as name, role, phone and fax numbers, and mail and email addresses, for the purposes of installing and servicing the Products and performing the Services if applicable, as well as surveying customer satisfaction. Except as otherwise required by the Privacy Legislation and other applicable law, such data will be retained by BD for the duration of Customer’s Service requirements under this Agreement or until Customer notifies BD in writing of its wish to change or withdraw it, whichever is sooner.
    3. Without limitation, Customer shall provide all requisite information and notices to employees and end-users and otherwise comply with all requirements under the Privacy Legislation and such other privacy and data protection laws and regulations in connection with its obligations in respect of the Data and/or under this clause 16.3.
    4. Any collection, use, holding, transfer and/or disclosure of the Data or other Personal Information by Customer or BD shall be subject to the Data Protection Schedule.
14. **Reporting Obligations and Investigations**
    1. In addition to complying with all applicable legal requirements, Customer shall report to BD (and provide all available information related to) any Product incident and near incident: (a) immediately upon the incident occurring, where it has resulted in death; and (b) within 24 hours after the incident where it has or could have resulted in serious injury. In addition, Customer shall report to BD within 7 days (or such period as may be required by BD from time to time and notified to Customer) all complaints, reports, notices, or comments of any kind relating to the Products. This reporting obligation applies without limitation to any complaints, reports, notices, or comments from an end-user or any governmental entity that: (a) any of the documentation relating to any Product is inadequate; (b) relate to any allegation of deficiencies in respect of the identity, quality, durability, reliability, safety, effectiveness, or performance of any Product; or (c) relate to adverse events, injuries, or malfunctions of or involving any of the Products. If Customer has any doubt as to whether a particular incident, near incident, complaint, report, notice, or comment should be reported to BD under this clause 18.1, Customer shall err on the side of over-inclusiveness and report promptly such incident, near incident, complaint, report, notice, or comment to BD.
    2. Customer shall provide BD with all such information and assistance as is necessary, including in investigating any incidents and near incidents, and any complaints, reports, notices, or comments of any kind received by Customer or from any governmental entity or any other person (in any form and whether relating to adverse events, injuries, or malfunctions of or involving any of the Products). Where the Customer files any incident or near incident reports with a government authority, it shall inform BD, if possible, prior to such filings being made (except as otherwise required by applicable law) and in any case, no later than immediately after such filings have been made. All documents and information which Customer is required to furnish or deliver to BD and its representatives and to government authorities hereunder shall be so furnished or delivered at no cost to BD.
15. **Assignment; Subcontracting**
    1. To the extent permitted by law, the Customer cannot assign, novate or transfer its rights or obligations under these terms or any part thereof without the express written consent of BD. BD may assign, novate or transfer its rights or obligations or any part thereof under these terms to an Affiliate of BD or to an authorised distributor of BD or the manufacturer of the Products or to a successor to the business to which these terms relates, without the Customer’s consent.
    2. BD may subcontract any or all of its obligations under these terms, including the Schedules, to a third party including to a technical service representative, without the Customer's consent. Any Services will only be subcontracted by BD to BD-trained subcontractors.
16. **Governing Law**

All issues or disputes arising out of or in connection with a Contract or these terms (including disputes regarding its interpretation and non-contractual disputes or claims) ("Disputes") shall be governed exclusively by the substantive laws of Auckland, New Zealand, excluding the United Nations Convention on Contracts for the International Sale of Goods and the United Nations Convention on the Limitation Period for the International Sale of Goods. Any Disputes shall be resolved exclusively by the courts having jurisdiction in Auckland, New Zealand.

1. **Whole Agreement; Invalidity; Waiver**
   1. The Contract including these terms, its Schedules and annexures, shall constitute the entire agreement between the parties regarding its subject matter and shall supersede all prior agreements, understandings, transactions and communications between the parties, whether oral or in writing, with respect to the same.
   2. The invalidity in whole or in part of any provision of the Contract shall not affect the validity of other provisions or parts thereof.
   3. Failure by either party to exercise or enforce any of its rights hereunder shall not be deemed to be a waiver of such right nor operate so as to bar the exercise or enforcement thereof. Any waiver of any right by BD or Customer will only be effective if it is in writing.
2. **Compliance with Laws**

The parties shall comply with all laws and regulations applicable to their respective performance of each Contract including any mandatory laws applicable in all jurisdictions where the Customer carries on business.

1. **Unlawful Influence**

BD and the Customer each represent and warrant that, to the best of its knowledge, neither it nor any of its respective directors, officers, employees, agents, medical personnel, Affiliates or affiliated organisations has any significant influence on the other party or any of the other party's directors, officers, employees, agents, medical personnel, Affiliates or affiliated organisations, or will receive any direct or indirect benefits or proceeds from a Contract other than as expressly stated in the Contract. BD and the Customer each warrant that neither it nor any of its respective directors, officers, employees, agents, medical personnel, Affiliates or affiliated organisations has violated any applicable laws or regulations or any applicable policies of which the other party has given notice regarding the offering, provision, request for or receipt of unlawful inducements in connection with a Contract.

1. **Effective Date**

These terms is effective from the issue date shown at the footer of each page and are applicable to Contracts entered into after such effective date. These terms is subject to revision and replacement from time to time by BD in its sole discretion, and any revisions or replacement shall indicate the date from which it shall apply. BD shall notify Customer in writing of any revision or replacement to these terms made from time to time and provide Customer with a copy of such revised or replaced terms. It shall apply to all Contracts entered into from the date such revision or replacement terms became effective.

1. **Prioritization of Documents**

In resolving inconsistencies in a Contract that incorporates these terms, documents have priority in the following order: (a) Acknowledgement of Order; (b) special conditions as set up in the Contract; (c) the Schedules to these terms; (d) the main body of these terms, and (e) the Purchase Order.

1. **Notices**

Any notice from one party to the other party relating to the Contract shall be in writing and delivered either by hand, courier or mail (certified or registered, return receipt requested, postage prepaid) to the attention of General Counsel/General Manager at the receiving party’s registered address. A notice shall be deemed to be served, (a) where delivered by hand, by courier and/or fax, when it is delivered and (b) where delivered by certified or registered mail, 3 working days after it is mailed. Either party may change its notice address upon written notice to the other party.