

TERMS AND CONDITIONS OF SALE

The following terms (which may be reviewed from time to time as notified to you) (**Trade Terms**) shall be incorporated into each contract between you and Phytomed Medicinal Herbs Limited (**Phytomed**) for the supply of all goods or services (**Goods**).

Phytomed is a New Zealand owned and operated manufacturer and wholesaler of medicinal herbs. Upon opening an account with us you agree to the following Trade Terms and accept these govern all future transactions unless prior written agreement is secured.

OUR PRODUCTS

Liquid Extracts and Capsules:

- The Phytomed range of liquid extracts and capsules are “**Practitioner Only**” and intended for distribution to suitably qualified Naturopaths and Medical Herbalists.
- **They are sold on the understanding that they are to be dispensed only in the context of consultation and must not be displayed or offered for sale under any other circumstance.**
- Students, or people trained in other disciplines may be able to purchase a limited range of liquid extracts at our sole discretion. Please contact us for more information.
- All new prescriptions submitted to our dispensary by students must be signed off by a tutor or discussed with one of our herbalists, prior to dispensing. Manufacturers will be required to provide evidence of intended usage.

Kiwiherb products

The Kiwiherb range of products are available to practitioners, retail stores and students who have completed at least one year of formal training at an approved institution.

Dried Herbs

The Phytomed range of dried herbs and capsules is available to all account holders.

FIRST ORDER DISCOUNT

Please advise us when placing your first order to receive your **10% first order discount** (this does not apply to orders for contract manufacturing or to start-up kits).

ORDERS

Phytomed reserves the right to reject any order at its sole discretion. Once accepted by Phytomed, an order shall form part of the contract between you and Phytomed.

OUT OF STOCK ITEMS

Any item out of stock at the time of purchase will be put on backorder for dispatch as soon as it becomes available. We cover the freight cost of backorders. Please ensure you advise us if the backorder is not required.

DAMAGED GOODS / RETURNS

Please order carefully - due to the nature of our products we are unable to receive returned product back for the purpose of credit or refund, if you decide that you do not want the product.

In the event you receive incorrect goods or goods that have been broken in transit, it is your responsibility to advise us within 2 working days of receipt. We will then organise a replacement product.

DELIVERY OF ORDERS

All orders will be processed as soon as is practicable upon receipt, we aim to dispatch orders within 24hrs. Orders over \$200 (excluding GST) are freight free.

Courier service is generally overnight nationwide. Please allow an extra 1-2 days for delivery for rural delivery. All consignments are sent using ‘signature required’ courier tickets unless otherwise requested. Phytomed will accept no responsibility for any item left without signature and will in no event be liable for any late delivery.

An invoice will accompany all orders. Please retain this for your records. A monthly statement will be **emailed** at the end of each calendar month showing all account activity for the month.

PAYMENT

Payment of an invoice is required on or before the 20th of the month following the invoice date. Payment can be made by cheque, direct credit (to such bank account as Phytomed shall notify to you), Visa or MasterCard. We recommend you do not send cash – you do so at your own risk. You can, however, pay your account with cash in person, at our offices. Please note, we do not have EFTPOS facilities.

If full payment for Goods is not made to Phytomed by the due date, Phytomed may, at its sole discretion (and without affecting any other rights Phytomed may have against you), require you to pay, on demand, default interest on any amount outstanding at 2% per month, accruing on a daily basis on the unpaid portion of the price from the due date until the date when payment is actually made. You will be liable to pay all expenses and costs (including legal costs as between solicitor and client) in connection with Phytomed recovering or attempting to recover any overdue amount.

CREDIT LIMIT

Phytomed may impose a credit limit at its discretion, and alter the credit limit without notice. Where your credit limit is exceeded, Phytomed reserves the right to refuse to supply Goods to you.

RISK

Risk in the Goods shall pass immediately to you upon delivery. If you wish to sell the Goods before payment has been made in full, you shall immediately pay the proceeds of such sale or sales to Phytomed.

SECURITY INTEREST

The Goods, and all of your present and future rights in relation to the Goods, are subject to a continuing security interest in favour of Phytomed for the payment of all amounts owing, and the performance of all obligations, under these Trade Terms. You acknowledge that Phytomed may, at your cost, register its security interest in the Goods, and all of your present and future rights in relation to the Goods, on the Personal Property Securities Register.

You shall do all things and provide all information as Phytomed may require for the purpose of securing to Phytomed the Goods, the payment of all amounts owing and the performance of all of your obligations under these Trade Terms, and for the purpose of ensuring that Phytomed has a perfected first ranking security interest in the Goods and any proceeds. You shall not change your name or other details without first notifying Phytomed in writing at least 14 days before such change takes effect.

You:

- agree that if, at any relevant time, Phytomed does not at that time have priority over all other secured parties in relation to the Goods or any other personal property relating to these Trade Terms, then you and Phytomed shall, for purposes of section 109(1) of the Personal Property Securities Act 1999 (PPSA), be deemed, in accordance with the entitlement to do so under section 107(1) of the PPSA, to have contracted out of that section;
- agree that nothing in sections 114(1)(a) (to receive notice of sale or goods), 116 (to receive a statement of account), 117(1)(c), (to receive any surplus) 119 (to recover any surplus), 120(2) (to receive notice of proposal to take goods), 133 (to reinstate security agreement) and 134 (limit on reinstatement) of the PPSA will apply to these Trade Terms or the security interest under these Trade Terms;
- waive all of your rights under sections 121 (to object to proposal), 125 (damage to goods on removing accession), 129 (notice of removal of accession), 131 (court order preventing removal of accession), 132 (redemption of collateral) of the PPSA; and
- waive your right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest under these Trade Terms.
- The terms **accession**, **financing statement**, **personal property**, **verification statement** and **security interest** have the meanings given to them under the PPSA.

Phytomed shall have the right, as your agent, at any time while any amounts owing by you to Phytomed under these Trade Terms remain outstanding, to enter into the premises where Goods are stored and remove them without being responsible for any damage caused in doing so. The Customer shall indemnify Phytomed for all such monies and all costs, charges and expenses in repossessing the Goods.

CONSUMER GUARANTEES ACT 1993 (CGA) AND FAIR TRADING ACT 1986 (FTA)

You acknowledge that you are acquiring the Goods for business purposes and that the provisions of the CGA are excluded. You will not do or omit to do anything which gives rise to any liability on your part or on the part of Phytomed under the CGA or the FTA. The Customer will not make any representation or give any guarantee, warranty or other undertaking in relation to the Goods unless that representation, guarantee, warranty or undertaking is supplied by Phytomed.

LIMITATION OF LIABILITY AND INDEMNITY

The liability of Phytomed, whether in contract, tort or otherwise, shall be excluded to the fullest extent permitted under the law. Notwithstanding this provision, should Phytomed be held liable under these Trade Terms, the liability of Phytomed shall not exceed in aggregate the invoice price of the relevant Goods supplied.

You shall at all times indemnify and hold harmless Phytomed and its employees, officers, agents and contractors from and against any loss, costs, claims, damages, expenses (including legal costs and expenses on a solicitor/own client basis), liabilities, proceedings or demands, whether direct or indirect, incurred or suffered by any of them where were caused by:

- a breach of these Trade Terms or of any warranty given by you in relation to the Goods, your qualifications and training on your part or on the part of any person for whom you are responsible; or
- any wilful, negligent or unlawful act or omission by you.

DEFAULT, TERMINATION AND SUSPENSION

Phytomed may suspend or terminate any contract incorporating these Trade Terms, and the payment of all amounts owing by you to Phytomed under these Trade Terms shall immediately become due and payable, if you:

- are in breach of any term of these Trade Terms or any other contract with Phytomed;
- are unable to pay your debts as they fall due or cease or threaten to cease conducting your business in the normal manner;
- enter into, or attempt to enter into, any composition, assignment or other arrangement with, or for the benefit of, your creditors;
- become, threaten or resolve to become, or you are in jeopardy of becoming insolvent;
- being a partnership, dissolve, threaten or resolve to dissolve or is in jeopardy of dissolving; or
- being a natural person, dies.

This provision shall survive the termination or expiration of these Trade Terms.

Prices are GST exclusive and are subject to change.

I/We understand and agree that all orders made and all goods supplied by Phytomed Medicinal Herbs (Phytomed), are made and supplied subject to these terms & conditions of sale and understand all prices are exclusive of GST and are subject to change at Phytomed's discretion.

Name: _____ Position: _____

Signed: _____ Date: _____