



Trading Terms and Conditions

1. DEFINITIONS

1.1. In these Terms the following words and phrases have the following meanings:

- (a) **"Business Day"** means any day which is not a Saturday, Sunday or a public holding in Melbourne, Victoria, Australia.
- (b) **"Contract"** has the meaning as defined in clause 2.1(b).
- (c) **"Corporations Act"** means the Corporations Act 2001 (Cth).
- (d) **"Credit Application"** has the meaning as defined in clause 4.4.
- (e) **"Credit Account Application Form"** has the meaning as defined in clause 4.4.
- (f) **"Credit Limit"** has the meaning as defined in clause 9.1.
- (g) **"Deliver"** has the meaning as defined in clause 6.1
- (h) **"Delivery"** has the meaning as defined in clause 6.1.
- (i) **"Delivered"** has the meaning as defined in clause 6.1.
- (j) **"Force Majeure Event"** means any act, event or circumstance, other than a failure to pay:
 - (i) as a direct or indirect result of which, the party relying on it is prevented from or delayed in performing any of its obligations under these Terms; and
 - (ii) that is beyond the reasonable control of that party.
- (k) **"Forward Charge"** means where Glutagen allow you additional time to pay for Goods.
- (l) **"Glutagen"** means Glutagen Sales Pty Ltd (ACN 636 869 200)
- (m) **"Goods"** means any goods supplied or to be supplied by Glutagen to you from time to time.
- (n) **"GST"** has the meaning given to that term in the GST Act.
- (o) **"GST Act"** means the A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended from time to time.
- (p) **"Insolvency Event"** means any one or more of the following events or circumstances occurring in relation to you:
 - (i) the commission of an act of bankruptcy as defined in the Bankruptcy Act 1966 (Cth);
 - (ii) being in liquidation or provisional liquidation or under administration;
 - (iii) having a controller (as defined in the Corporations Act) or analogous person appointed to you or any of your property;
 - (iv) being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
 - (v) being unable to pay debts as and when they fall due;
 - (vi) becoming an insolvent under administration, as defined in section 9 of the Corporations Act;
 - (vii) entering into a compromise or arrangement with, or assignment for the benefit of, any of your members or creditors; and
 - (viii) any analogous event or circumstance under the laws of any jurisdiction.

- (q) **"Invoice"** has the same meaning as defined in clause 7.6.
- (r) **"Order"** means an order by you for the provision of Goods and/or Services by Glutagen.
- (s) **"Outstanding Amounts"** means all amounts due and payable by you to Glutagen which remain outstanding past their due date for payment from time to time.
- (t) **"Services"** means any services supplied or to be supplied by Glutagen to you from time to time.
- (u) **"Glutagen's Online Store"** means the Glutagen' online store.
- (v) **"PPSA"** means the Personal Property Securities Act 2009 (Cth).
- (w) **"Terms"** means these standard trading terms.
- (x) **"you"** means a party requesting supply of Goods and/or Services.

2. FORMATION OF CONTRACT AND EXCLUSIVITY OF CONDITIONS

- 2.1. You acknowledge that each and every Order submitted to Glutagen:
 - (a) is a separate offer all or part of which Glutagen may accept or reject at Glutagen's absolute discretion; and
 - (b) to the extent accepted by Glutagen, gives rise to a binding agreement between you and Glutagen for the supply of Goods and/or Services on these Terms ("**Contract**").
- 2.2. These Terms replace any other terms previously in force between you and Glutagen, subject to any specific written agreement between you and Glutagen.
- 2.3. Glutagen may vary these Terms between Orders by notice to you, which may be electronic or otherwise. Electronic notice may be given by posting the varied Terms on Glutagen's Online Store in which case the variations take effect on posting. The varied Terms will only apply to Orders made after those variations have been notified. Your continued purchase of Goods and/or Services after such notification constitutes acceptance and will evidence your consent to the provision of those Goods and/or Services on these Terms as varied. Where separate discounts or incentives are offered, they incorporate these Terms.

3. ORDERS

- 3.1. You must order the Goods from Glutagen by submitting an Order to Glutagen using Glutagen's Online Store or such other means as notified by Glutagen to you from time to time.
- 3.2. Once submitted, an Order cannot be cancelled, or Delivery deferred, without Glutagen's consent.
- 3.3. Glutagen are not bound by an Order except to the extent Glutagen accept an Order, either by notifying you of that acceptance or by commencing performance of the accepted part of the Order.
- 3.4. To the fullest extent permitted by law, Glutagen are not obliged to accept any Order.

4. WARRANTIES

- 4.1. You warrant that you or the person making an Order on your behalf has sufficient power and authority to enter into a Contract with Glutagen on these Terms.
- 4.2. You warrant that no statement or representation made by you or on your behalf to Glutagen prior to entering into any Contract with Glutagen is misleading or deceptive in any



Trading Terms and Conditions

- respect, and you warrant that you will be truthful and accurate in your dealings with Glutagen.
- 4.3. You warrant that you will, as soon as practicable, notify Glutagen of any event including any pending or threatened event that could have an adverse effect on your ability to perform your obligations under a Contract or otherwise result in any previous statement or representation made by you or on your behalf to Glutagen becoming untrue or incorrect.
- 4.4. You represent and warrant to Glutagen that you will not sell, resell or otherwise supply any Goods supplied by Glutagen to any third party, whether in Australia or otherwise, without the prior written consent of Glutagen which may be withheld by Glutagen in its absolute discretion.
- 4.5. You represent and warrant that you will not make any representations to any third party regarding the Goods and Services without the prior written approval of Glutagen.
- 4.6. To the extent that you are permitted to sell, resell or otherwise supply any Goods supplied by Glutagen to any third party, you represent and warrant that you will at all times comply with directions and requirements of Glutagen from time to time.
- 4.7. Unless otherwise agreed by Glutagen, any application for credit by you ("**Credit Application**") must be by way of completing and submitting to Glutagen Glutagen's Credit Account Application Form ("**Credit Account Application Form**"). You warrant that the contents of the Application Form are true and correct, and you acknowledge that Glutagen rely upon its contents.
- 4.8. You indemnify and must keep Glutagen indemnified against all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis) that may be brought against Glutagen or which Glutagen may pay, sustain or incur as a direct or indirect result of your breach of this clause 4 or any other clause of these Terms.
- 5. GLUTAGEN'S PRICES**
- 5.1. Goods and/or Services are supplied at the price current on the date of supply which price may differ from the price displayed on Glutagen's Online Store. The prices for Goods and/or Services in Glutagen's Online Store are subject to alteration without notice.
- 5.2. Glutagen may agree to discount these prices or provide rebates, incentives or other allowances to you at Glutagen's discretion.
- 5.3. Unless otherwise stated in writing, all prices quoted are exclusive of GST, which must be added to the price and be paid by you if GST is applicable. It is your responsibility to determine whether or not GST is payable.
- 5.4. Any suggested or recommended prices in Glutagen's Online Store, on Glutagen's invoice, or Glutagen's other publications are indicative only and carry no obligation for you to comply with that suggestion or recommendation.
- 6. DELIVERY OF GOODS**
- 6.1. Delivery of Goods is to the location identified as the delivery address notified by you to Glutagen, whether on your Application Form or otherwise ("**Delivery**"), unless otherwise specified in writing. ("**Deliver**" and "**Delivered**" have corresponding meanings.)
- 6.2. You acknowledge that any Delivery times provided by Glutagen to you are estimates only.
- 6.3. Glutagen are not liable for any loss, damage or delay suffered by you or any third party arising out of late Delivery or non-Delivery of Goods.
- 6.4. Glutagen reserve the right to make part Deliveries of any Order and each part Delivery constitutes a separate Contract upon these Terms.
- 6.5. You acknowledge that by accepting Delivery, you represent that the Delivered Goods have been received in accordance with the requirements of:
- the Therapeutic Goods Act 1989 (Cth) and any associated regulations, if applicable; and
 - any state or territory law, regulation, code of practice or other subordinate legislation regarding transport, delivery and storage of the Goods. Inspection
- 6.6. You must examine all Goods promptly on Delivery and notify Glutagen within five (5) Business Days after receipt of the Goods ("**Inspection Period**") of any damage to or shortage in the Goods and of obvious defects of and shipping errors with respect to the Goods.
- 6.7. If you have not notified Glutagen within the Inspection Period of any damage to or shortage in the Goods, then the Goods will be deemed to have been delivered in good condition and as ordered by you.
- 6.8. You may request to return, and receive a credit in respect of, any damaged Goods or shortage in delivery of the Goods provided that such request is received by Glutagen within the Inspection Period.
- 6.9. To the extent permitted by law, Glutagen will not accept the return of, or provide a credit in respect of, any Good unless:
- you requested to return the Goods within the Inspection Period relating to those Goods;
 - prior written approval of the return of the Goods has been provided by Glutagen (which will not be unreasonably withheld);
 - the Goods (including packaging) are in the same condition as at the date of Delivery;
 - the Goods are returned via Glutagen's nominated carrier; and
 - in the case of Goods Delivered in a damaged state or Goods Delivered other than in accordance with the Order, Glutagen was given notice in accordance with clause 6.6.
- 7. PAYMENT**
- 7.1. You must pay:
- the price of the Goods and/or Services supplied by Glutagen as determined in accordance with these Terms;
 - the price of the Goods and/or Services in advance before such Goods and/or Services are provided by Glutagen unless Glutagen agree to supply Goods and/or Services to you on credit;
 - the agreed charges in respect of each item of Goods and each Service supplied by Glutagen;
 - all other charges agreed between you and Glutagen from time to time;
 - any applicable stamp or other duties; and
 - any other amounts owing under these Terms, without deduction or set-off, to Glutagen within the relevant timeframe set out in these Terms.



Trading Terms and Conditions

- 7.2. If you pay any of Glutagen's invoices by way of credit card Glutagen are entitled to require you to reimburse Glutagen for any fees incurred by Glutagen or deducted from the payment to Glutagen.
- 7.3. Unless Glutagen expressly agree to the contrary in writing, if one or more invoices are outstanding, all of the proceeds of any payment made by you (or on your behalf) shall be allocated and credited firstly to any late payment fees accrued on any outstanding invoices, secondly to the oldest invoice outstanding and then to each more recent invoice (in order from the oldest to the most recent) until all invoices are paid in full.
- 7.4. Subject to clause 7.5, you must pay for the Goods and/or Service in advance before Glutagen are required to provide such Goods and Services.
- 7.5. If Glutagen agree to supply Goods and/or Services to you on credit the following terms apply:
- (a) unless another date is indicated on your statement or otherwise agreed by Glutagen, all invoices must be paid within 14 days after the date of the invoice issued by Glutagen in respect of Goods and/or Services provided, or to be provided, by Glutagen;
 - (b) In relation to clauses 7.5(a):
 - (i) no discounts or incentives will apply to payments made after the due date; and
 - (ii) where the due date falls on a day that is not a business day, payments are due the prior business day.
- 7.6. You are not deemed to have paid Glutagen's invoice for the supply of Goods and/or Services to you ("**Invoice**") until the entire amount due at any time by you to Glutagen under that Invoice has been received by Glutagen's bank in immediately available funds.
- 7.7. If you object to any item or calculation on an Invoice, you must:
- (a) notify Glutagen of your objection in accordance with Glutagen's relevant policies and;
 - (b) pay the full amount of the Invoice less the disputed amount by the due date.
- 7.8. If you fail to give notice in accordance with clause 7.7 within 3 Business Days of receipt of the Invoice, you are deemed to have accepted the contents of the Invoice as being true and correct.
- 7.9. Glutagen may take any objection made in accordance with clause 7.7 into account in a subsequent Invoice to you. Payment of subsequent Invoices from Glutagen incorporating any adjustments by Glutagen resulting from an objection constitutes a final determination of the objection as between you and Glutagen.
- 8. GST**
- 8.1. In this clause 8:
- (a) the expressions Consideration, Input Tax Credit, Recipient, Supply, Tax Invoice and Taxable Supply have the meanings given to those expressions in the GST Act; and
 - (b) Supplier means any party treated by the GST Act as making a Supply under a Contract.
- 8.2. Unless otherwise expressly stated, all prices or other sums payable or Consideration to be provided under or in accordance with these Terms are exclusive of GST.
- 8.3. If GST is imposed on any Supply made under or in accordance with these Terms, the Recipient of the Taxable Supply must pay to the Supplier an additional amount equal to the GST payable on or for the Taxable Supply, subject to the Recipient receiving a valid Tax Invoice in respect of the Supply.
- 8.4. Payment of the additional amount must be made at the same time and in the same way as payment for the Taxable Supply required to be made in accordance with these Terms.
- 9. ACCOUNT LIMIT**
- 9.1. Glutagen may, in its absolute discretion, approve or reject any Credit Application to grant you with a credit account with a credit limit ("**Credit Limit**").
- 9.2. Glutagen may require further trade references or reports from you from time to time and additional information if you apply to increase your Credit Limit.
- 9.3. Glutagen may, in its absolute discretion without notice to you:
- (a) increase or decrease your Credit Limit; or
 - (b) suspend or cancel your Credit Limit.
- 9.4. You agree that you will, on Glutagen's request, also provide Glutagen further supporting documentation for the purpose of assessing your credit worthiness.
- 9.5. In no circumstances are Glutagen obliged to approve any application for an increase in Credit Limit and Glutagen are not obliged to give you reasons for Glutagen's decision.
- 9.6. Without limiting clause 3.4, you acknowledge that Glutagen may refuse to accept an Order if Glutagen have reasonable concerns regarding your creditworthiness.
- 9.7. In the event that you issue a Order which, if Glutagen were to accept that Order, would result in the Order plus any Outstanding Amounts exceeding the Credit Limit, you must pay to Glutagen an amount equal to the amount in excess of the Credit Limit in advance before Glutagen provides the Goods and/or Services in respect of the Order to you.
- 10. ALL CONTRACTS**
- 10.1. Where you are a company, Glutagen reserve the right to require a guarantee and indemnity (in a form and for an amount satisfactory to Glutagen) from the directors of the company. Such guarantee and indemnity is to be current for the period of time during which Glutagen accept Orders from you. In any event if you are not a company Glutagen reserve the right to require a guarantee and indemnity from an acceptable person.
- 10.2. If an amount is payable by Glutagen to you under a Contract, or under any other account, arrangement or agreement between you and Glutagen, Glutagen are entitled to set off that amount against any amount you owe Glutagen under another Contract or under any other account, arrangement or agreement where the parties to the Contracts or accounts are the same.
- 10.3. Glutagen may register any security interest in connection with these Terms for the purposes of the PPSA (including a security interest under a Contract) for whatever class or classes of collateral Glutagen think fit. You consent to any registration by Glutagen and may not make an amendment demand. You must do anything (such as obtaining consents, signing and producing receipts and documents, getting documents completed and signed and supplying information) which Glutagen ask and consider necessary for the purposes of ensuring that each such security interest is enforceable, perfected and otherwise effective.



Trading Terms and Conditions

10.4. In relation to any security interest in connection with these Terms:

- (a) Glutagen need not give any notice under the PPSA (including a notice of a verification statement) in relation to a security interest in connection with these Terms unless the notice is required by the PPSA and cannot be excluded;
- (b) Glutagen need not comply with any of the provisions of the PPSA that would otherwise apply to the extent the law permits them to be excluded; and
- (c) you may not exercise rights under sections 142 (redemption of collateral) or 143 (reinstatement of security interest) of the PPSA to the extent the law permits them to be excluded.

10.5. Everything you are required to do under clauses 10.2 and 10.4 is at your expense. You agree to pay or reimburse Glutagen's costs in connection with anything you are required to do under clauses 10.2 and 10.4.

11. DEFAULT

11.1. In the event that:

- (a) there is a breach by you of any of these Terms;
- (b) any moneys payable to Glutagen become overdue, or in Glutagen's reasonable opinion you will be unable to meet your payments as they fall due; or
- (c) you are subject to an Insolvency Event;

then Glutagen may, without prejudice to Glutagen's other remedies under these Terms or at law and without notice to you:

- (d) cancel all or any part of any Contract which remains unperformed;
- (e) require that all amounts owing to Glutagen, whether or not due for payment immediately, be paid;
- (f) cancel any rebates given to you and recalculate the outstanding Invoices on Glutagen's standard prices;
- (g) continue with a Contract and recover all amounts outstanding under that Contract and damages suffered by or as a consequence of your failure to perform your obligations under that Contract;
- (h) suspend all future Deliveries until all outstanding Invoices are paid;
- (i) suspend credit terms and credit account facilities for any period that Glutagen deem necessary or permanently cancel them;
- (j) demand immediate settlement of credit accounts, Forward Charge amounts, outstanding late payment fees or other amounts;
- (k) terminate a Contract in accordance with clause 15 and require payment in full for all Goods and/or Services supplied up to the date of termination, or require the return of those Goods, at Glutagen's election;
- (l) suspend your account for any period that Glutagen deem necessary or permanently cancel it; and
- (m) where you have more than one Contract or account with Glutagen for which you are liable (including any Contract or account for which you are jointly and/or severally liable):
 - (i) transfer overdue amounts owing on one Contract or account to any other Contract or account; and

- (ii) take any of the steps specified in clauses 11.1(d)-(l) (inclusive) in respect of any other Contract or account.

11.2. You will indemnify Glutagen for all costs (including legal costs on a full indemnity basis), charges, commissions, fees and disbursements incurred by Glutagen in recovery of any unpaid account, including charges for any dishonoured cheques received.

11.3. If you owe money in relation to any Contract, Glutagen reserve the right to change or withdraw any discounts or incentives, and/or to remove any credit facilities provided to you under any other Contract you may have with Glutagen.

12. INSPECTION, INSURANCE AND RECORD-KEEPING

12.1. You must inspect the Goods provided by Glutagen immediately upon Delivery, and notify Glutagen within 5 Business days of such Delivery of any discrepancy between the Goods Delivered and the Invoice.

12.2. You are responsible for insuring the Goods from Delivery, and are responsible for maintaining such insurance until you have paid for the Goods in full.

12.3. You must comply with all state and territory laws relating to:

- (a) record-keeping, storage and any other matters relating to the Goods, including without limitation, those applying to dangerous Goods and temperature-sensitive Goods from the time that they are Delivered;
- (b) any limitations on your ability to deal with the Goods supplied (including limitations on your ability to export or resupply Goods); and
- (c) any limitations on the types of Goods and/or Services that your business may offer.

12.4. You must not supply the Goods outside Australia without Glutagen's prior written agreement.

13. RISK AND TITLE

13.1. Goods supplied by Glutagen to you are at your risk immediately on Delivery.

13.2. Save for any Goods returned to Glutagen in accordance with these Terms, or any short Delivery notified to Glutagen in accordance with these Terms, all other Goods identified on the Invoice are deemed to have been accepted by you "as is" upon Delivery.

13.3. Proper title to Goods supplied by Glutagen to you under a Contract does not pass to you until all Goods supplied by Glutagen under any Contract have been paid for in full as identified in clause 7.6.

13.4. Where you do not make payment in respect of all Goods supplied under any Contract, Glutagen can elect to treat any payment as having been made first in respect of Goods which have passed out of your possession.

13.5. For the purposes of identification of different shipments of Goods purchased from Glutagen and receipt of payment, you agree that the principle of "Last in, First Out" shall be applied to any items that cannot be distinguished.

13.6. Until all Goods have been paid for in full:

- (a) you must store Goods separately and in such manner as to show clearly that they are not your property and are property of the owner, whether the owner is Glutagen or another;
- (b) you may if previously permitted by Glutagen in writing, unless you have failed to make payment in respect of any Goods when due or an Insolvency Event occurs, sell Goods, in the ordinary course of your business, as



Trading Terms and Conditions

- the owner's trustee and must hold all proceeds of sale on trust for the owner and must keep the proceeds separately;
- (c) you authorise Glutagen (and Glutagen's representatives) to enter any premises (at any time, whether or not monies are immediately due and payable under these Terms) upon which Goods are stored to enable the owner to inspect Goods, to reclaim possession of Goods, and to sell or otherwise dispose of the Goods in any way and on any terms (including price) that the owner chooses, and you warrant that the landlord of those premises (if applicable) has provided consent to such access. These rights are in addition to any rights Glutagen may have under Chapter 4 of the PPSA;
- (d) Glutagen have a security interest (for the purposes of the PPSA) in the Goods and any proceeds until title passes to you in accordance with clause 13.3. This security interest secures all moneys owing by you to Glutagen under these Terms and each Contract in connection with the Goods. Each security interest is a "purchase money security interest" under the PPSA to the extent that it secures payment of the amounts owing in relation to the Goods; and
- (e) the security interest arising under this clause 13.6 attaches to the Goods when you obtain possession of the Goods and the parties to the Contract confirm that they have not agreed that any security interest arising under this clause 13.6 attaches at any later time.
- 13.7. If you sell or otherwise dispose of the Goods supplied by Glutagen before title to them has passed from Glutagen to you:
- (a) that part of the proceeds of any sale or dealing as is equal to the amount outstanding to Glutagen or, if the proceeds of sale or dealing are less than the amount outstanding to Glutagen, the whole of the proceeds of sale or dealing (in either case, "**Glutagen's Entitlement**") must be held by you in a separate identifiable account on trust for Glutagen and must not be mixed with any other moneys held by you; and
- (b) you must account to Glutagen for Glutagen's Entitlement, until all your liabilities to Glutagen have been discharged.
- 13.8. Without limitation to any other provision of these Terms, you have no right, and are otherwise not permitted, to sell the Goods or deal with the Goods if:
- (a) an Insolvency Event occurs in relation to you or a guarantor of your obligations under these Terms or a Contract; or
- (b) you are in breach of these Terms or a Contract;
- (c) Glutagen does not provide its written consent for you to sell, resell or otherwise on supply any Goods.
- 13.9. You indemnify and must keep Glutagen indemnified against all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis) that may be brought against Glutagen or which Glutagen may pay, sustain or incur as a direct or indirect result of the exercise by Glutagen of Glutagen's rights under this clause 13, except to the extent it is caused by Glutagen's negligence or wilful breach of these Terms.
- 14. CLOSURE OF ACCOUNT/ CHANGE OF BUSINESS / SALE OF BUSINESS**
- 14.1. You must notify Glutagen in writing and provide Glutagen with any information or documents that Glutagen reasonably require, no less than 14 days before a proposed change of ownership, change of business structure, incorporation, change of business name or business premises or closing your account with Glutagen.
- 14.2. If providing Glutagen with information in accordance with clause 14.1 means that you will disclose third party information, you must provide third party written consent to that disclosure at the time of information provision.
- 14.3. You indemnify Glutagen against any losses incurred by Glutagen due to change of ownership, change of business structure, incorporation, partnership or change of name or business premises.
- 14.4. If you do not comply with clause 14.1, you will be liable for any losses incurred due to the events set out in that clause, including, without limitation, any charges made by someone other than you operating at your last-notified business premises after account closure until the time that you notify Glutagen of the closure.
- 14.5. You will make immediate payment of all Outstanding Amounts, upon closure of the account, change of business premises or sale of the business.
- 15. TERM AND TERMINATION OF A CONTRACT**
- 15.1. A Contract commences upon Glutagen's acceptance of an Order, in accordance with clause 2.1(b) and expires 7 days after the date of payment for the Order.
- 15.2. Glutagen may terminate a Contract:
- (a) at any time upon 14 days' notice, at Glutagen's sole discretion;
- (b) if you breach any provision of a Contract and fail to remedy the breach within 7 days of receiving written notice from Glutagen requiring you to do so; or
- (c) immediately if an Insolvency Event occurs.
- 15.3. On termination of a Contract under clause 15.2(b) and 15.2(c), all amounts owing to Glutagen on any account (whether the due dates have passed or not) become immediately due and payable.
- 15.4. On termination of a Contract under clause 15.2(b) and 15.2(c), all Orders (whether or not accepted by Glutagen at the time of termination) will be automatically cancelled, except to the extent otherwise directed in writing by Glutagen.
- 15.5. On termination of a Contract, Glutagen retain rights against you in respect of any past breach, in addition to any other rights, powers or remedies provided by law.
- 15.6. All indemnities in a Contract are continuing and will not be released by Glutagen's neglect or forbearance or by a Contract being terminated or otherwise ceasing to operate.
- 15.7. Glutagen will not be liable to you for any claims by you for any loss and damage for, or on account of, or arising from, any termination of a Contract under this clause 15 or for any suspension, withholding or retention by Glutagen in accordance with clause 11.1.
- 15.8. Clause 4 survives termination of a Contract.
- 15.9. Time is of the essence to these Terms.
- 16. LIMITATION OF LIABILITY**
- 16.1. Nothing in this clause 16 operates to exclude, restrict or modify the application of any implied condition or warranty, provision, the exercise of any right or remedy or the imposition of any liability, implied or conferred under the



Trading Terms and Conditions

Australian Consumer Law (being Schedule 2 to the Competition and Consumer Act 2010 (Cth)) or any other statute, the exclusion, restriction or modification of which would:

- (a) contravene that statute; or
- (b) cause any terms of these Conditions to be void.

(Non-excludable Obligations).

16.2. The maximum liability of Glutagen arising under or in connection with the Goods and/or Services, a Contract or these Terms, (except in connection with Goods or Services of a kind ordinarily acquired for personal, domestic or household use or consumption, in respect of which the Glutagen's liability is not so limited under these Terms) in no case exceeds one or more of the following at the election of Glutagen:

- (a) in the case of Goods, repairing or replacing the Goods or supplying equivalent Goods, or payment of the cost of replacing or repairing the Goods or the costs of acquiring equivalent Goods; and
- (b) in the case of Services, supplying the Services again or payment of the costs having the Services supplied again.

16.3. Except in relation to Non-excludable Obligations, to the maximum extent permitted by law:

- (a) unless stated in these Terms, all warranties, conditions and representations, whether express or implied and whether in writing or oral, are expressly excluded and do not form part of these Terms or a Contract.
- (b) Glutagen are not liable to you for any loss, damage, liability, expense, injury or death sustained or incurred by you or any other party, including without limitation any loss of profits, or economic, special, indirect or consequential loss or damage, the supply, performance or use of any Goods or out of any breach by Glutagen under any Contract incorporating these Terms, even if notified of the possibility of that potential loss or damage.
- (c) Where liability cannot be excluded, Glutagen limit liability to the resupply (or at Glutagen's election, paying for the cost of resupply) of the relevant Goods and/or Services.
- (d) Glutagen accept no liability in relation to or on behalf of third parties, including liability to your customers or liability for the manufacturers of Goods.
- (e) If despite anything in this clause 16, Glutagen are held or found to be liable to you for any matter relating to or arising in connection with a Contract, whether based on an action or claim in contract, tort or otherwise, the amount of damages that you will be entitled to recover from Glutagen will be limited to the amount paid by you.

17. PRIVACY

17.1. You consent to us collecting your personal information in order to provide you with Goods and/or Services you have requested. Without this information, we can't provide Goods and/or Services under these Terms with you.

17.2. We may contact you with marketing material about Glutagen and our related businesses that may interest you. We may disclose your personal information to our related companies and to third parties who provide Glutagen with (or help Glutagen provide) products and services and to health care information services providers who may use it. We may

provide information to our information technology providers in locations outside your locations.

17.3. Except where we may refuse access as permitted by law, you can gain access to the personal information we hold about you. Our privacy policy (available at www.glutagen.com.au) states how you can seek to access or correct any personal information we hold about you, how to complain about a privacy breach by us and how we will deal with a privacy complaint. You can contact us at professionals@glutagen.com.

18. TRUSTS

18.1. This clause applies if you are a trustee and whether or not Glutagen have notice of the trust.

18.2. Where you comprise two or more persons and any of those persons is a trustee this clause applies to such trustee.

18.3. You agree that even though you enter into these Terms as trustee of the trust, you also shall be liable personally for the performance and observance of every covenant to be observed and performed by you expressed or implied in these Terms.

18.4. You warrant your complete, valid and unfettered power to enter into these Terms pursuant to the provisions of the trust and warrant that your entry into these Terms is in the due administration of the trust.

18.5. You covenant you have a right of indemnity against the property of the trust and it has not, and in the future will not be, excluded, modified, released, lost or diminished (whether by agreement, breach of trust or otherwise).

18.6. You shall not, without Glutagen's prior written consent:

- (a) resign or be removed as trustee of the trust or appoint or allow the appointment of a new or additional trustee of the trust;
- (b) amend or revoke any of the terms of the trust;
- (c) vest or distribute the property of the trust or advance or distribute any capital of the trust to a beneficiary or resettle any of the property of the trust;
- (d) permit a beneficiary to have the use, occupation, employment or possession of the property of the trust;
- (e) do or permit or omit to do an act or thing in breach of the trust or which would permit the trustee to be removed as trustee of the trust;
- (f) exercise or permit or allow to be exercised a power to change the vesting date of the trust or provide for an early determination of the trust;
- (g) lend any money, give any guarantee or incur any debt other than in the ordinary course of business of the trust; or
- (h) pay any of the income of the trust to any beneficiary of the trust if such payment will prejudice or affect your ability to pay all monies due to Glutagen.

19. MISCELLANEOUS

19.1. You must, at all times, comply with all Australian laws and regulations relating to the Goods and/or Services, including, but not limited to, the *Therapeutic Goods Act 1989* (Cth) and any requirements or directions the Therapeutic Goods Administration.

19.2. You may not assign or otherwise deal with a Contract except with Glutagen's prior written consent.



Trading Terms and Conditions

- 19.3. Glutagen may assign, otherwise deal or sub-contract the performance of the whole or any part of Glutagen's obligations under a Contract.
- 19.4. Glutagen's failure to insist upon strict performance of these Terms or any part thereof will not be deemed to be a waiver of any of Glutagen's rights or remedies under a Contract nor any rights arising out of your subsequent breach or default.
- 19.5. If any of these Terms are unenforceable, illegal or void then it is severed and the rest of these Terms remain in force.
- 19.6. Glutagen's obligations will be suspended during the time and to the extent that Glutagen are prevented from or delayed in complying with those obligations as a result of a Force Majeure Event.
- 19.7. If Glutagen are affected by a Force Majeure Event, Glutagen must:
- as soon as reasonably possible after being affected, give you particulars of the Force Majeure Event and the manner in which Glutagen's performance of Glutagen's obligations will be prevented or delayed; and
 - take reasonable steps to remove, overcome or minimise the effects of the Force Majeure Event, except that Glutagen are not obliged to settle a strike, lockout or other lab Glutagen's difficulty.
- 19.8. You indemnify Glutagen against all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis) that may be brought against Glutagen or which Glutagen may pay, sustain or incur as a direct or indirect result of any one or more of the following:
- any material breach or non-performance of these Terms by you, including any breach of warranty;
 - any breach by you of any consumer guarantee, warranty, right or remedy given by you expressly or arising by operation of the Australian Consumer Law or any other applicable law;
 - any wrongful, wilful or negligent act or omission by you or by any of your employees, agents or contractors;
 - the storage, handling or use of any Goods sold under or in connection with these Terms, except to the extent that the relevant action, claim, proceeding, demand, liability, loss, damage, expense or cost was caused by the wrongful, wilful or negligent act or omission of Glutagen or of any of Glutagen's employees agents or contractors; and
 - any injury or loss sustained by any person who is employed or engaged by you as an employee, agent or contractor for the purpose of (among other things) the performance by you of your obligations under these Terms and who suffers any injury or loss arising out of or in the course of such employment or engagement.
- 19.9. You will pay to Glutagen and all of Glutagen's expenses including any legal costs (on a full indemnity basis), stamp duties and other expenses payable under these Terms incurred in connection with the enforcement of, or preservation of any rights under these Terms. Such costs, duties and other expenses may be recovered by Glutagen from you as a liquidated debt. Any payments received by Glutagen from you shall be applied firstly to any legal costs, duties and other expenses, then to late payment fees and the remainder to the balance of moneys owed by you.
- 19.10. Any agreement, deed, covenant, representation or warranty on the part of two or more persons under or in connection with these Terms or a Contract is for the benefit and responsibility of them jointly and severally.
- 19.11. To the extent that there is any inconsistency between these Terms and any other agreement (including your standard terms), these Terms will prevail.
- 19.12. These Terms prevail to the extent of any inconsistency, over the terms of any Order or Invoice or other arrangement between the parties and displace any contradictory terms or provisions.
- 19.13. These Terms, any Contract and any communications Glutagen have with you regarding Glutagen's terms of supply (including without limitation Glutagen's pricing and discounts or incentives) are Glutagen's confidential information. You or your employees must not disclose this confidential information to any person (except to legal, financial or business advisers for the purpose of seeking advice relating to the terms and conditions), without Glutagen's prior written consent. You must notify Glutagen immediately of any unauthorised use or disclosure of Glutagen's confidential information. Nothing in this clause prevents you from disclosing Glutagen's confidential information if you reasonably believe it is required by law (except this paragraph does not permit you to disclose or authorise the disclosure of any information under sections 275(1) and (4) of the PPSA unless section 275(7) of the PPSA applies), as long as you notify Glutagen immediately when you become aware that such a disclosure may be required. This obligation of confidentiality will survive expiration or termination of these Terms and will continue until the information ceases to be confidential.
- 19.14. These Terms form the entire agreement on which Glutagen are willing to trade with you and all or any previous agreements or understandings Glutagen may have had with you are superseded by these Terms.
- 19.15. These Terms and each Contract will be governed by and construed in accordance with the laws of Victoria. The parties submit to the non-exclusive jurisdiction of the Victorian courts and any courts with appellate jurisdiction from the Victorian Courts.
- 19.16. Glutagen's privacy policy describes how Glutagen manage the collection, disclosure and use of personal information. Glutagen's privacy policy, as amended from time to time, forms part of these Terms and is available from the www.Glutagen.com.au website.
- 19.17. References to laws and statutory instruments are references to those laws and instruments as amended or substituted from time to time.