

BCF Ultrasound Australasia Pty Ltd – Terms of Trade

1. Interpretation

1.1 In these Terms:

- (a) **Customer** means the person(s), firm, company or other legal entity who purchase the Goods from BCF and if there is more than one, Customer is a reference to each Customer jointly and severally.
- (b) **BCF** means in Australia, BCF Ultrasound Australasia Pty Ltd ACN 117 911 841 of 13/23A Cook Rd, Mitcham, Victoria or in New Zealand, BCF Ultrasound Australasia Ltd Co. No 1155997.
- (c) **CGA (NZ)** means the *Consumer Guarantees Act 1993* (NZ).
- (d) **Consumer** has the same meaning as given by the Consumer Law.
- (e) **Consumer Law** means, as relevant, the Australian Consumer Law as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), the CGA (NZ) and/or the FTA (NZ).
- (f) **FTA (NZ)** means the *Fair Trading Act 1986* (NZ).
- (g) **Goods** means any goods agreed to be supplied to the Customer by BCF at the Customer's request from time to time will include the Goods outlined in any invoice, receipt or like document (either by item, product, category, brand or kind) that BCF gives the Customer.
- (h) **GST** means the same as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or the *Goods and Services Tax Act 1985* (NZ), as applicable to an order for Goods.
- (i) **Intended Purpose** means the use as set out in the relevant specification or brochure as may be supplied or notified with Goods or otherwise notified by BCF to the Customer (and until or failing any such notification then such lawful use as a reasonable person would apply to the Goods considering all material published in connection with the Goods).
- (j) **PPSA** means, for a Customer in Australia, the *Personal Properties Securities Act 2009* (Cth) and, for a Customer in New Zealand, the *Personal Properties Securities Act 1999* (NZ).
- (k) **Price** means the price payable for the Goods as agreed between BCF and the Customer in accordance with clause 4 below.

2. Application of terms

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound by these Terms if it places an order for or accepts delivery of the Goods.
- 2.2 Any variation to these Terms and any representations about the Goods will have no effect unless expressly agreed in writing and signed by a director of BCF.

3. Description

- 3.1 The description of the Goods will be as set out in BCF's quotation.
- 3.2 All drawings, descriptive matter, specifications and advertising issued by the manufacturer or BCF and any descriptions or illustrations contained in a manufacturer's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of these Terms.

4. Price

- 4.1 Once an order for Goods has been accepted by BCF, the Customer cannot cancel it.
- 4.2 BCF will take all reasonable steps to source all Goods ordered by the Customer and/or quoted by BCF.
- 4.3 The Customer acknowledges that placing an order for Goods does not guarantee BCF's ability to supply them. If BCF cannot provide any or all Goods for reasons beyond its control, it will notify the Customer and will not be liable for any shortfall.
- 4.4 The agreed Price will either be:
 - (a) as set out on any invoice provided by BCF to the Customer, based on its current price list on the date of delivery of the Goods; or

- (b) BCF's quoted Price (subject to clause 4.5), which will be valid for the period stated in the quote or otherwise for a period of seven days.
- 4.5 BCF reserves the right to vary the quoted Price if a variation to an order is requested by the Customer.
- 4.6 The Customer must pay the Price on the date/s determined by BCF, which may be:
- (a) before delivery of the Goods; or
- (b) failing any notice to the contrary, the date which is seven (7) days after the date on any invoice given to the Customer by BCF.
- 4.7 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed between the parties.
- 4.8 The Price does not include GST unless stated otherwise.
- 4.9 The Customer must pay GST, without deduction or set-off at the same time and on the same basis that it pays the Price. The Customer must also pay:
- (a) any other taxes and duties that may be applicable on top of the Price, except where they are expressly included in the Price; and
- (b) where BCF is undertaking installation, all flights, accommodation and other reasonable travel charges and outlays as otherwise notified to the Customer.
- 4.10 All amounts payable by the Customer to BCF must be paid in full in cleared funds, without any set-off, counterclaim or deduction.
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5. Delivery

- 5.1 Delivery occurs when:
- (a) the Customer or their nominated carrier takes possession of the Goods, including on signature by the nominated carrier or Customer; or
- (b) BCF or its nominated carrier delivers the Goods to the Customer's nominated address, whether a signature is obtained or not.
- 5.2 The cost of delivery is in addition to the Price, unless agreed otherwise.
- 5.3 The Customer must receive or collect the Goods whenever they are ready for delivery. If the Customer is unable to take delivery as arranged, BCF may charge a reasonable fee for redelivery and/or storage.
- 5.4 Delivery dates and times provided to the Customer by BCF are estimates only. The Customer must accept delivery of the Goods even if considered late and BCF will not be liable for any loss or damage the Customer incurs because of the late delivery.
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6. Cancellation

- 6.1 BCF may cancel delivery of Goods at any time before they are delivered by giving written notice to the Customer. Upon notification, BCF will repay the Customer any money it has already paid for the Goods. BCF will not be liable for any loss or damage arising from such cancellation.
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7. Risk

- 7.1 On delivery of the Goods, any risk of loss, damage or destruction passes to the Customer.
- 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, BCF is entitled to receive all insurance proceeds payable for the Goods. The sole production of these Terms by BCF is sufficient evidence of its rights to receive the insurance proceeds.
- 7.3 If BCF is requested to leave the Goods outside the Customer's premises for collection, or to deliver the Goods to an unattended location, then the Goods will be left at the Customer's sole risk.
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8. Title

- 8.1 The parties agree that ownership of the Goods will not pass until the Customer has paid BCF all amounts owing to it and fulfilled all its obligations.
- 8.2 Receipt by BCF of any form of payment other than cash will not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

- 8.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Customer in accordance with clause 8.1 that the Customer is only a bailee of the Goods and must return the Goods to BCF upon request; and
 - (b) if the Customer has not paid for the Goods, the Customer holds the benefit of any insurance of the Goods on trust for BCF and must pay the proceeds of any insurance to BCF if the Goods are lost, damaged or destroyed.
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9. Personal Property Securities Act

- 9.1 Consistent with clause 8, the Customer grants to BCF a security interest in all Goods supplied by BCF to the Customer as security for payment of all the Customer's indebtedness to BCF under these Terms from time to time and for the performance by the Customer of the Customer's other obligations from time to time to BCF.
- 9.2 If BCF determines that it wishes to register any security interest, the Customer agrees to do anything that BCF may require (such as obtaining consents, authorities, signing and producing documents, getting documents completed and signed and supplying information) as necessary or desirable for purposes of:
- (a) ensuring that BCF has an enforceable, perfected, maintained and otherwise effective purchase money security interest in the Goods;
 - (b) enabling BCF to apply for any registration, or give any notification, in connection with the security interest in the Goods so that security interest has the priority required by BCF; or
 - (c) enabling BCF to exercise any of its rights in connection with the security interest in the Goods.
- 9.3 The Customer must, upon demand, immediately reimburse BCF for all costs and expenses incurred, suffered or payable by BCF in relation to registration or enforcement of any financing statement or any other document in respect of the Goods.
- 9.4 BCF may allocate all amounts received from the Customer in any manner it determines against secured moneys outstanding, including in any manner it considers most favourable to preserve a purchase money security interest in the Goods.
- 9.5 While the Goods continue to secure any Customer's indebtedness to BCF, the Customer must not allow anything to be done or act in any way (or fail to act in any way) that might adversely affect BCF's security interest in the Goods and must store the Goods separately and clearly identify the Goods as being subject to BCF's security interest.
- 9.6 The Customer waives its rights to receive a copy of any verification statement or financing change statement under the PPSA and, as between the Customer and BCF, the Customer agrees it will have no rights under:
- (a) in Australia, sections 95, 118, 121, 129, 130, 132, 135, 142 and 143 of the PPSA; and
 - (b) in NZ, sections 116, 117(1)(c), 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 9.7 Nothing in sections 114(1)(a), 133 and 134 of the PPSA (NZ) will apply to these Terms.
- 9.8 The Customer agrees that BCF does not need to give any notice to the Customer under the PPSA unless the notice is required by the PPSA and that requirements cannot be excluded.
- 9.9 Nothing in these Terms is intended to have the effect of contracting out of any of the provisions of the PPSA that cannot be contracted out of.
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10. Warranties and Consumer Law

- 10.1 To the maximum extent permitted by law, BCF makes no express (except as set out in these Terms) and excludes all implied (whether by common law, statute or otherwise) representations, warranties, terms, conditions and guarantees of any kind whatsoever. BCF is not liable to any person, including any Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, under or in connection with these Terms, any order or the supply of any Good or service, for any proximate, incidental, indirect, special or consequential loss, liability, expense, cost, damage or claim, even if BCF has been advised of, or should have reasonably contemplated, the possibility of such loss, liability, expense, cost, damage or claim, or for any loss of sales, revenue, profits, goodwill or opportunity.
- 10.2 Subject to clauses 10.1, 10.3 and 10.4, but otherwise to the maximum extent permitted by law, BCF's:
- (a) liability pursuant to or for:

- (i) any representation, warranty, term, condition or guarantee expressed or implied in these Terms; and
- (ii) any other rights or remedies of a Customer or any third party claiming through that Customer,

will be limited, at BCF's option, to (i) replacement of the Goods or resupply of the services (or supply of equivalent Goods or services) (ii) repair of the Goods (iii) payment of the cost of replacing the Goods or resupplying the services (or acquiring equivalent Goods or services) or (iv) payment of the cost of having the Goods repaired or services made good; and

(b) BCF's total maximum liability under or in connection with these Terms, any order or supply of any Goods or service, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, is limited to the amount paid by the Customer to BCF under the relevant order.

10.3 When purchased by a Consumer, the Goods or services come with consumer guarantees that cannot be excluded under the relevant Consumer Law. In such case, subject to the relevant Consumer Law, the Customer may be entitled to a replacement or refund for a major failure of any Goods and for compensation for any other reasonably foreseeable loss or damage, as well as to cancel a service. The Customer may also be entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.

10.4 Nothing in these Terms is intended to exclude, restrict or modify any rights that the Customer may have under the relevant Consumer Law or any other applicable legislation which may not be excluded, restricted or modified by agreement.

10.5 For the purposes of section 5D of the FTA (NZ) and section 43 of the CGA (NZ), if the Customer is acquiring Goods or services in trade then to the extent permitted by law:

- (a) the Goods or Services provided to the Customer under or in connection with these Terms are being provided and acquired in trade;
- (b) if the FTA (NZ) and/or the CGA (NZ) applies to the supply of the Goods or services to the Customer under or in connection with these Terms, in respect of all matters under or in connection with these Terms, the parties are contracting out of the CGA (NZ) and sections 9, 12A and 13 of the FTA (NZ);
- (c) the parties have each had an opportunity to receive advice from a lawyer prior to contracting under these Terms; and
- (d) it is fair and reasonable for the parties to be bound by this clause 10.5.

10.6 If the Customer is not a Consumer, BCF's liability for any defect or damage in the Goods is:

- (a) limited to any warranty to which BCF is entitled from any manufacturer of the Goods (if not BCF); or
- (b) otherwise negated absolutely.

11. Authorised uses

11.1 The Goods are for use by the Customer on animals in accordance with the Intended Use exercising due care and skill and in accordance with any operating instructions or manual that is supplied with the Goods.

11.2 For the avoidance of doubt the Goods must not be used on humans unless expressly permitted in writing by the manufacturer.

11.3 The Customer will issue all instructions, documentations and warnings on use to subsequent purchasers/users.

12. Data back up

12.1 Goods are complex items of equipment that may occasionally fail due to external causes or internal faults. This failure can result in the loss, corruption, deletion or alteration of software or data (including user-generated data). Unless the Customer regularly and continually backs up all data it may be lost or corrupted in the event of a failure. The Customer agrees to regularly and continually back up all data

stored on the Goods, and complete a backup prior to seeking support, or returning the Goods to BCF under these Terms.

- 12.2 Without limiting clause 10, BCF will not be liable for any loss of, or spoiling of any of the Customer's data resulting from any failure of the Customer to back up data, unless such fault is caused by the negligence or wilful misconduct of BCF, its employees, agents or sub-contractors.

13. General

- 13.1 **Waiver:** BCF's failure to enforce any provision of these Terms will not be treated as a waiver of that provision, nor will it affect their subsequent right enforce that provision.
- 13.2 **Severability:** if any provision of these Terms is deemed invalid, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions will not be affected.
- 13.3 **Governing Law:** these Terms and any contract to which they apply will be governed by the laws of the state of Victoria and are subject to the jurisdiction of the courts in that state.
- 13.4 **Variation:** BCF may in its absolute discretion change these Terms at any time by publication on its website. The change will take effect from the time specified but will not apply to any existing orders for Goods. If the Customer does not wish to agree to the new Terms, the Customer can request to negotiate the new Terms.
- 13.5 **Force majeure:** neither party will be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 13.6 **Authority:** the Customer warrants that it has the power to enter into these Terms and has obtained all necessary authorisations to do so, it is not insolvent and that these Terms create binding and valid legal obligations on it.
- 13.7 **Entire Agreement:** these Terms constitute the entire agreement between the parties, and supersede all representations, agreements and other communications made by BCF.
- 13.8 **Confidentiality:** the parties must keep completely confidential all information regarding the strategies, business affairs, accounts, finance or contractual arrangements of the other.
- 13.9 **Assignment:** the Customer may transfer any right or benefit under these Terms with BCF's prior written agreement. BCF may transfer its rights and obligations under these Terms to a purchaser of BCF's business or to a related company or for business efficiency by notifying the Customer in writing.
- 13.10 **Disputes:** Any dispute between the parties will be discussed between them in the spirit of goodwill.