

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 Australia Pty Ltd (**Phytomed**) for the supply of all goods or services (**Goods**).

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.

KIWIHERB PRODUCTS

The Kiwiherb range of products are available to qualified health practitioners, health food stores, pharmacies and specialist retail stores engaged in the sale of natural health products.

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 \$100 (excluding GST) are freight free.

Courier service is generally overnight. 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 **within 30 days following the invoice date** for credit account customers. Payment can be made by direct credit (to such bank account as Phytomed shall notify to you), Visa or MasterCard credit cards - these payments attract a 3% surcharge. We do not accept cash.

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, payment prior to the due date will be required.

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.

TITLE TO THE GOODS

Phytomed shall retain title to all goods until paid for in full, at which time the goods become the property of the customer. If you have signed for the complete amount of items delivered by the courier, Phytomed will not be responsible for claims of missing goods.

CHANGE OF OWNERSHIP

Written notification of any change of ownership of your business is required by Phytomed, and arrangement of all outstanding monies owed to Phytomed must be made prior to or at the time of settlement.

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.

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.

AUSTRALIAN CONSUMER LAW - CONSUMER GUARANTEES - AND FAIR TRADING ACT 1987 (FTA)

You acknowledge that you are acquiring the Goods for business purposes and that the consumer guarantee provisions of the Australia Consumer Law 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 either the Australian Consumer Law 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.