



BMedical Australia - Terms and Conditions

All Orders placed with BMedical Pty Ltd ACN 135 532 795 as the trustee for The BMedical Trust ABN 41 253 184 701 (hereinafter referred to as "BMedical") are subject to the following Terms and Conditions. The Reseller acknowledges and confirms that it, he or she, has read, understood and unconditionally accepts, the following Terms and Conditions. These Terms and Conditions constitute a legally binding Agreement between BMedical and the Reseller.

1 Recitals

- 1.1 BMC Medical Co Ltd, a company incorporated under the laws of China ("BMC Medical"), develops home respiratory care devices. BMC Medical has developed devices known as Luna CPAP and BiPAP for the treatment of obstructive sleep apnea and other respiratory disorders. BMC Medical has granted BMedical the exclusive legal rights to import, market, promote, distribute and sell the Products in Australia.
- 1.2 BMedical has the power and authority to grant the Reseller non-exclusive Reseller Rights in respect of the Products for the Territory. The Reseller is desirous of being granted non-exclusive Reseller Rights for the Products and BMedical has agreed to grant non-exclusive Reseller Rights to the Reseller for the Territory.
- 1.3 BMedical and the Reseller have agreed to enter this Agreement for the purpose of establishing a non-exclusive distribution relationship between them for the Products on the terms, covenants and conditions set out in this Agreement.

2 Definitions and Interpretation

2.1 In this Agreement, except to the extent the subject matter or context may otherwise require, the following definitions apply.

"Account Form" means the BMedical new customer, or existing customer, account form by which a Reseller can apply to create, or update, a distribution account with BMedical in respect of the sale of the Products to the Reseller.

"Agreement" means this non-exclusive distribution agreement (incorporating the Quote, the Account Form, the Order Confirmation, the Price List and these Terms and Conditions) formed between BMedical and the Reseller on the acceptance of an Order by BMedical.

"Approvals" means all consents, authorisations, registrations, permits, licences or certifications, required to sell the Products within the Territory.

"BMedical" means BMedical Pty Ltd ACN 135 532 795 as the trustee for The BMedical Trust ABN 41 253 184 701 and includes its administrators, successors and permitted assigns and any person acting on behalf of and with the authority of BMedical.

"BMedical Materials" means any marketing, advertising or other materials provided to the Reseller by or at the direction of BMedical for the purposes of this Agreement, including without limitation, any documents, information, equipment and software.

"Claim" means any actions, suits, proceedings, demands, losses, injuries, damages, costs, expenses, judgments or any other detriment whatsoever.

"Commencement Date" means the date that an Order placed by the Reseller is accepted by an Order Confirmation issued BMedical.

"Confidential Information" means and includes any information that by its nature is confidential, is designated by a party as confidential, or the recipient knows or ought to know is confidential and includes, without limitation:

- (a) information conveyed in written, graphic, oral, visual or physical form and may include, without limitation, various technical and commercial data, know-how and information, and any other activity or information of any nature whatsoever including data, data bases, source codes, methodologies, techniques, manuals, artwork, advertising manuals, formulae, processes, designs, sketches, photographs, plans, drawings, specifications, samples, reports, marketing or commercial information, studies, improvements, examples, cases, findings, inventions and ideas, the Intellectual Property, trade secrets, patents, engineering and product specifications, material formulations, models, prototype, product concepts and other records and information in relation to BMedical or the business of BMedical;
- (b) financial, management and marketing information;
- (c) research, plans or other documentation;
- (d) information imparted in discussions or obtained through inspections or by any other method from BMedical or the agents, advisers, consultants, employees or contractors of BMedical;
- (e) information marked as 'confidential';
- (f) information which the parties are instructed is confidential, or which the parties are instructed to be kept confidential;
- (g) information concerning the organisation, finance, customers, markets and suppliers of BMedical;
- (h) information disclosed to the parties in circumstances which would, to a reasonable person, indicate that the information is sensitive commercial information or information of a kind which, if disclosed to third persons, could or might cause any of the parties to sustain loss or damage; and
- (i) oral, written, electronic and/or recorded information of any party's business, products, financial or marketing information, operations, systems, assets or liabilities,

but does not include information which:

- (j) is or becomes public knowledge other than by breach of this Agreement;
- (k) is required to be disclosed by law;
- (l) was known by the recipient as at the date of this Agreement;
- (m) has been independently developed or acquired by the recipient without reference to the disclosing party's Confidential Information,

where the burden of establishing any of the exceptions referred to in subparagraphs (j) to (m) above will be upon the recipient.

"Consumer" means any person who purchases or may purchase the Products within the Territory for their own personal, domestic or household use or consumption, but does not mean, include or apply to any Person that purchases the Products for any commercial purpose including without limitation for the purpose of distribution, resupply, resale, licence, let or hire of the Products within the Territory to any Person that is not a Consumer.

"Deliver/Delivery" means the delivery of the Products to the Reseller's Delivery Address within the Territory.

"Delivery Address" means the delivery address of the Reseller or the carrier of the Reseller within the Territory as specified in the Order.

"Delivery Time" means the estimated time of Delivery of the Products to the Delivery Address of the Reseller.

"Government Agency" means a government or government department, a governmental, semi-governmental or judicial person and a person (whether autonomous or not) charged with administration of any applicable law.

"GST" means GST under the GST Law and any other tax, levy or impost (including a goods and services tax, consumption tax or value added tax) applying in respect of the payment of any money under this Agreement or the supply of any Products under this Agreement.

"GST Law" means *A New Tax System (Goods and Services) Tax Act 1999* (Cth) and any other law, public ruling or determination imposing or dealing with the assessment, collection, imposition, calculation, payment or recovery of or liability for GST.

"Intellectual Property" means any and all intellectual and industrial property rights throughout the world including rights in respect of or in connection with:

- (a) a party's intellectual property that existed prior to, or created independently of, this Agreement;
- (b) the Confidential Information, trade secrets, technical data and know-how;
- (c) copyright;
- (d) inventions and discoveries (including patents, innovation patents and utility models);
- (e) trade marks or service marks and rights in, arising out of, or associated with domain names, business names and social media accounts;
- (f) designs or circuit layouts; and
- (g) any other rights resulting from intellectual property activity in the industrial, commercial, scientific, literary or artistic fields which subsist or may hereafter subsist,

whether or not now existing and registered or registrable and includes any right to apply for the registration of rights and all renewals and extensions.

"Invoice" means a tax invoice that complies with GST laws.

"Law" means all applicable laws of the State or Territory in which the Products are provided by BMedical to the Reseller including all amendments and replacing laws.

"Loss" means any damage, loss, liability, expense or cost whether direct or indirect, consequential or incidental.

"Marketing Plan" means any plan or strategy designed to promote, advertise, market and/or sell the Products to the Consumer using the Reseller Materials, including without limitation, any advertising, website, online and/or direct marketing by the Reseller, or by any third party for and on behalf of the Reseller.

"New Products" means all new products of whatever kind that BMedical may introduce as part of its overall range of products available to the Reseller.

"Notice" means a notice in writing issued in accordance with this Agreement.

"Order" means a written order placed by the Reseller with BMedical for the purchase (and if applicable, the Delivery) of the Products to the Reseller, which order must specify the following information (including any other information required by BMedical):

- (a) the date of the placement of the order;
- (b) the quantity and description of the Products ordered;
- (c) the proposed Delivery Time; and
- (d) the Delivery Address.

"Order Confirmation" means a written confirmation of the Order issued by BMedical that may be in the form of an Invoice provided to the Reseller by email, post or provided to the Reseller upon Delivery of the Products.

"Party/Parties" means a party to this Agreement.

"Person" means a natural person, corporation or any body that is recognised at Law as being a legal entity or having legal personality.

"Price" means the price specified in the Order Confirmation as payable by the Reseller to BMedical for the Products, or the price specified in any Quote as payable by the Reseller to BMedical for the Products, whichever is greater.

"Price List" means the most current price list for the Products as published (and if applicable, provided to the Reseller) by BMedical from time to time, whether contained in any document or published online.

"Products" means:

- (a) all products listed in any Price List published by BMedical from time to time;
- (b) all products authorised for sale by BMedical from time to time whether or not they have been imported, manufactured or packaged by BMedical; or
- (c) all New Products introduced by BMedical from time to time.

"Quote" means any written quote issued by BMedical to the Reseller in relation to the Products (including any special conditions and/or other details applicable to the Reseller's Order under this Agreement) to which these Terms and Conditions are either annexed or to which access to these Terms and Conditions may be gained by the Reseller by accessing the website link specified in the Quote and/or the Account Form.

"Reseller" means any Person that enters this Agreement, or enters this Agreement for and on behalf of any Person, and if there is more than one Reseller, then each of them jointly and severally, including all executors, administrators, successors and permitted assigns, or any person acting for, or on behalf of, or with the authority of, the Reseller.

"Reseller Materials" means any and all advertising material, brand and marketing communications including without limitation, ideas, designs, concepts, original compositions, printing templates and pro-formas, brochures, artwork, finished advertisements, radio and television commercials and all trade marks and trade names, brand names, trade symbols, logos, slogans or other trade indicia purchased, prepared, created, developed or acquired, by or on behalf of the Reseller, but does not include the BMedical Materials.

"Reseller Rights" means the non-exclusive rights granted to the Reseller by BMedical as set out in clause 4.1 of this Agreement.

"Term" means the term set out in clause 5 of this Agreement.

"Terms and Conditions" means these Terms and Conditions as amended from time to time by BMedical.

"Territory" means Australia or any other specific or restricted geographical area in Australia as determined by BMedical from time to time as the only area in which the Reseller may market, promote and sell the Products.

2.2 In the interpretation of this Agreement:

- (a) headings are included for convenience only and do not affect the interpretation of the Terms and Conditions;
- (b) references to legislation or provisions of legislation include changes or re-enactments of the legislation and statutory instruments and regulations issued under the legislation;
- (c) words denoting the singular include the plural and vice versa, words denoting individuals or persons include bodies corporate and vice versa, references to documents or agreements also mean those documents or agreements as changed, novated or replaced, and words denoting one gender include all genders; grammatical forms of defined words or phrases have corresponding meanings;
- (d) unless otherwise stated, a reference to an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia;
- (f) if the day on or by which anything is to be done is a Saturday, a Sunday or a public holiday in the place in which it is to be done, then it must be done on the next business day;
- (g) references to a party are intended to bind their executors, administrators and permitted transferees; and
- (h) obligations under this Agreement affecting more than one party bind them jointly and each of them severally.

3 Formation of Agreement

- 3.1 These Terms and Conditions supersede all previous terms and conditions imposed by BMedical and may only be varied in writing by BMedical.
- 3.2 Each Order will constitute an offer by the Reseller to purchase the Products from BMedical upon and subject to these Terms and Conditions. Any Quotes and/or Price List given by BMedical to the Reseller are an invitation to the Reseller to place an Order with BMedical only and do not constitute an offer capable of acceptance by the Reseller.
- 3.3 The Quote, the Account Form, the Order Confirmation, the Price List and these Terms and Conditions constitute the entire Agreement between the parties. Any prior understandings, representations, promises, variations, exclusions and/or qualifications of any kind whatsoever (whether contained in any Order or document of the Reseller, or expressed verbally or contained in any writing) shall not be binding on the parties except to the extent incorporated in writing into this Agreement or expressly agreed in writing by BMedical.
- 3.4 A Quote submitted by BMedical to the Reseller may be varied or withdrawn at any time prior to the acceptance of an Order by BMedical. Clerical or other errors made in respect of any Quote issued by BMedical shall be subject to correction by BMedical.
- 3.5 A legally binding Agreement will only be made between BMedical and the Reseller for the supply of the Products upon BMedical giving an Order Confirmation to the Reseller.

4 Non-Exclusive Appointment

- 4.1 In consideration of the Reseller agreeing to comply with the covenants and obligations under this Agreement, BMedical:
- (a) appoints the Reseller as the non-exclusive Reseller of the Products in the Territory from the Commencement Date for the Term in accordance with the rights and obligations of the Parties as set out in this Agreement; and
- (b) grants the Reseller the non-exclusive right to market, promote and sell the Products in the Territory for the Term to the Consumer.
- 4.2 The Reseller promises and undertakes to BMedical that it will not directly or indirectly market, promote, resupply, resell, distribute, transmit, licence, hire, let, trade, give or expose for sale the Products within the Territory or otherwise:
- (a) to any Person who it knows, or ought to know, is not a Consumer; or
- (b) to any Person who competes (or may be deemed to compete) with the business of BMedical; or
- (c) in any way other than expressly provided for in this Agreement.
- 4.3 On the written request of the Reseller, BMedical may, at its sole, absolute and unfettered discretion, agree in writing to waive and/or vary the restrictions, terms or conditions, or any part thereof, set out in clause 4.2 above.
- 4.4 BMedical reserves the unconditional right to reinstate any restrictions, terms or conditions, or any part thereof, set out in clause 4.2 of this Agreement, with immediate effect on notice to the Reseller, and despite any previous waiver and/or variation that BMedical may have agreed to pursuant to clause 4.3 above, which will be of no legal effect.

5 Term of Agreement

- 5.1 This Agreement commences on the Commencement Date and continues for an initial period of twelve (12) months ('Initial Term'), unless the Agreement is terminated in accordance with any express right of termination set out in this Agreement.
- 5.2 Following the expiry of the Initial Term, this Agreement will automatically renew for further terms each of twelve (12) months ('Further Term'), on the same terms and conditions as set out in this Agreement, unless:
- (a) either party gives written notice to the other party advising that it does not wish to renew the Agreement for a Further Term at least ninety (90) days prior to the end of the Initial Term or any Further Term which the parties may have entered; or
- (b) this Agreement is otherwise terminated in accordance with any other express right of termination set out in this Agreement.

6 Price and Order

- 6.1 The Price of the Products is set out in any Price List published by BMedical from time to time (and if applicable, as provided to the Reseller by BMedical).
- 6.2 All Orders for the Products must be made to BMedical as follows:
- (a) in writing or by electronic data interchange (e.g. email transmission); or
- (b) by telephone, if within 3 business days of the placement of the Order, it is confirmed by a means outlined in clause 6.2(a).
- 6.3 For the avoidance of any doubt, BMedical is under no legal obligation to accept any Order of the Reseller. The Reseller acknowledges that the ability of BMedical to accept or fulfil an Order is subject to the availability of the Products and/or the capacity of BMedical (whether in relation to the availability of servicing personnel or otherwise) to meet an Order of the Reseller. BMedical may at its sole, absolute and unfettered discretion, for any reason whatsoever, reject any Order from the Reseller at any time.
- 6.4 BMedical may, at its sole, absolute and unfettered discretion:
- (a) request that payment for the Order be made on any terms BMedical thinks fit (including without limitation requesting that the full payment or 50% of the full payment of the Order be made to BMedical in advance and prior to the Delivery of the Products); and
- (b) change the Price of the Products at any time without notice.

7 Payment Terms

- 7.1 Subject to any payment terms imposed by BMedical under clause 6.4(a), the Reseller must pay any Invoice issued by BMedical within twenty-eight (28) days of the Invoice date ('Invoice Due Date') and otherwise in accordance with the Invoice terms.
- 7.2 If the Reseller does not pay the Invoice on or before the Invoice Due Date, then, unless the delay is due to an error of BMedical, the Reseller is liable to pay BMedical the highest price for each item of the Product ordered (irrespective of any Price quoted, or specified in the Order Confirmation, by BMedical, and without the benefit of any discounts applicable to larger quantity Orders) as follows:
- (a) in relation to the CPAP/BiPAP Machines, the price for each item of the Product applicable where the quantity of the Product ordered is between 1-9 CPAP/BiPAP Machines; or
- (b) in relation to the CPAP Masks, the price for each item of the Product applicable where the quantity of the Product ordered is between 1-24 CPAP Masks.
- 7.3 The Reseller must review all Invoices issued by BMedical and advise BMedical immediately of any errors or omissions before the Invoice Due Date. If the Reseller does not advise BMedical of any errors or omissions by the Invoice Due Date, the Invoice is deemed valid and the Reseller accepts liability for the Invoice in full.
- 7.4 Payments are to be made via bank transfer, electronic funds transfer, EFTPOS and/or credit card (which may incur a surcharge). American Express incurs a 1.6% surcharge (including GST), as may be varied from time to time. Payments are to be made to BMedical in full without deduction or set off against the Price, whether legal or equitable.
- 7.5 The Price or the Products in any Price List are exclusive of GST.
- 7.6 The Reseller covenants that it will bear all costs and charges relating to, arising from or connected with the Delivery, freight and/or other transportation costs of the Products to the Reseller at the Delivery Address.
- 7.7 The Reseller must pay to BMedical any GST, freight and Delivery charges, relating to the Products at the same time and in the same manner as payment of the Price for the Products is made by the Reseller to BMedical.
- 7.8 All financial institution duty, stamp duty, Government charges or direct costs of any kind associated with the operation of the Reseller's account, will be charged to the Reseller.
- 7.9 Fees and charges are subject to change without notice.
- 7.10 Without limiting the ability of BMedical to recover all amounts owing to it under this Agreement, the Reseller authorises BMedical to charge any amounts owing to it under this Agreement to any credit card or account details provided by the Reseller to BMedical.

- 7.11 Time for payment is of the essence.

8 Delivery

- 8.1 Any timeframes quoted by BMedical for the Delivery of the Products are estimates only.
- 8.2 BMedical shall not be liable for any delay, failure or inability to Deliver the Products.
- 8.3 BMedical shall not be liable for any Claim, Loss or damage whatsoever due to failure by BMedical to Deliver the Products promptly or at all.
- 8.4 The failure of BMedical to Deliver the Products to the Reseller shall not entitle the Reseller to treat this Agreement as repudiated.
- 8.5 BMedical reserves the right to withdraw an Order Confirmation at any time before the Delivery Time and BMedical will not be liable for any Claim, Loss or damage whatsoever arising from its failure to Deliver any or all of the Products to the Reseller.
- 8.6 Any term of this Agreement relating to the quantity of the Products is not the essence of the Agreement. BMedical reserves the right to make partial deliveries against an Order and to Invoice each partial Delivery separately and the Reseller cannot reject the Products on the basis of partial Delivery.
- 8.7 Where the Products remain in the possession of BMedical after the Delivery Time (including where the Reseller fails for whatever reason to take Delivery of the Products), BMedical is entitled to charge the Reseller for all Losses occasioned by the Reseller in not accepting the Delivery, together with any costs and Losses in respect of the carriage, care and custody of the Products.
- 8.8 Unless otherwise agreed by BMedical, all Products will be delivered to the Delivery Address. The Reseller must ensure that it, its employees or agents are in attendance at the Delivery Address at the agreed time or period to accept Delivery of the Products and to acknowledge receipt upon the consignment note or Invoice accompanying the Products.
- 8.9 The Reseller warrants that the person who signs the Delivery notice is authorised to receive the Products on their behalf.
- 8.10 A quantity, description, date and place of Delivery, as indicated on BMedical's Invoice or dispatch note, shall be referenced as evidence of quantity, description, date and place of Delivery of the Products.
- 8.11 If the Reseller fails to take Delivery of the Products on the specified date, and the Order is returned to BMedical, a second delivery charge will be imposed on the Reseller.
- 8.12 BMedical may arrange for the storage and carriage of Products by couriers, contractors or sub-contractors. Notwithstanding any specific instructions given by the Reseller as to the mode of carriage of the Products, and in the exercise of its absolute discretion, BMedical may have Products carried or forwarded by any method which it deems fit.
- 8.13 Unless otherwise specified in a Quote, the Products shall be packed in BMedical's standard packing. The cost of any special packing and packing materials required by the Reseller shall be at the Reseller's expense.

9 Cancellation, Inspection and Returns

- 9.1 BMedical may terminate this Agreement at any time before the Delivery of the Products to the Reseller by giving written notice to the Reseller. BMedical shall not be liable for any Claim, Loss or damage whatsoever arising from such cancellation.
- 9.2 The Agreement resulting from the provision of the Order Confirmation to the Reseller cannot be terminated or cancelled by the Reseller for any reason without BMedical's prior written approval and BMedical may at its discretion impose a reasonable cancellation fee (including, without limitation, a Claim for any Loss or loss of profits suffered by BMedical).
- 9.3 The Reseller must inspect the Products within two (2) business days of the Delivery Time and, if no inspection is so made, the Reseller is deemed to have accepted the Products. The Reseller has no Claim for incorrect Products, shortages, defects or any Loss in respect of the Products apparent on inspection unless a written complaint is made to BMedical within three (3) business days of the Delivery Time specifying the incorrect Products, shortage or defect. BMedical is, after receipt of the complaint, permitted to inspect the Products and investigate the complaint. If a complaint is not made to BMedical in accordance with this subclause, the Products delivered will be deemed to be in accordance with the Agreement, and BMedical will not be held liable for any Claims or Losses regarding the Products whatsoever, and the Reseller is bound to pay for them accordingly.
- 9.4 Where the Reseller has ordered incorrect Goods, an incorrect item number for the Products is used, an incorrect unit of issue or pack size is Ordered, an Order exceeds the Reseller's requirements, an incorrect account number is used or an Order is duplicated, the Reseller may, provided the Reseller has complied with subclause 9.3, and after receiving written approval from BMedical, return the Products to BMedical subject to the Products being returned in the same condition as when first delivered to the Reseller and subject to the Reseller bearing the freight costs of the Delivery and return of the Products.
- 9.5 BMedical shall not be under any obligation to accept Products returned by the Reseller. BMedical will only accept the return of Products from the Reseller where:
- (a) the Reseller has complied with subclause 9.3 and BMedical is satisfied as to the claim by the Reseller; and
- (b) the Products are returned to BMedical in the same condition as when first delivered to the Reseller.
- 9.6 The Reseller shall not return any Products to BMedical without first providing to BMedical an original proof of purchase.
- 9.7 If BMedical is required to re-Deliver any Products to the Reseller, in circumstances where BMedical is not at fault (or if BMedical is at fault but Notice of the error is not given by the Reseller to BMedical as required by subclause 9.3), BMedical is entitled to charge a restocking surcharge fee of 20% of the gross value of the Order plus any Delivery charges for the further re-Deliveries of the Products.
- 9.8 Notwithstanding any other provisions of these Terms and Conditions, the Reseller shall not return any Products which have been custom made, custom cut, custom processed or custom acquired.

10 Interest and Debt Collection

- 10.1 Interest on overdue Invoices or accounts shall accrue daily from the date when payment becomes due, until the date of payment, at the standard contract default rate prescribed by the Queensland Law Society from time to time and such interest shall compound weekly until the Invoice or account is settled in full.
- 10.2 Should the account be referred to a collection agency, the Reseller shall pay a 15% collection fee plus any and all costs associated with the recovery of the debt including without limitation debt collection, outsourcing and legal costs on an indemnity basis should BMedical take legal action, whether outside or through the Courts and Tribunals.

11 Product Inventory and Storage

- 11.1 The Reseller agrees at all times to maintain an inventory of the Products sufficient in variety and quantity to satisfy Consumer demand and permit the efficient operation of the Reseller's business under this Agreement.
- 11.2 The Reseller promises and undertakes to maintain a database of all the serial numbers of the Products sold to the Consumers such that each Product may be traced to the Consumer to whom the Product was sold ('Database').
- 11.3 In the event of a Product recall:
- (a) the Reseller agrees to provide any and all information held by the Database to BMedical immediately upon request; and
- (b) the Reseller must immediately notify BMedical as directed by the Therapeutic Goods Administration and/or any other Government Agency.
- 11.4 The Reseller will be responsible for its own storage of the Products and must comply with any recommendations and/or directions given by BMedical in respect of storage.

12 Directions and Training

- 12.1 The Reseller must follow all reasonable directions and carry out all reasonable requests of BMedical in respect of the marketing, promoting, education, training, storage, packaging, presentation, servicing, operation and/or sale of the Products.

- 12.2 The Reseller undertakes and agrees to attend any website or other training provided by BMedical on the safe and proper use, maintenance and operation of the Products.
- 12.3 The Reseller promises and undertakes to ensure that all its employees, servants or agents engaged in the marketing, promoting, servicing or sale of the Products to the Consumer are properly educated and competently trained in the safe and proper use, maintenance and operation of the Products.
- 12.4 Unless otherwise directed by BMedical, the Reseller will be solely responsible at its cost for providing competent instructions and training to the Consumer on the safe and proper use, maintenance and operation of the Products.

13 Marketing and Promotion

- 13.1 BMedical may, at its sole, absolute and unfettered discretion, reject or accept, whether in whole or in part, a Marketing Plan proposed by the Reseller. In the event BMedical rejects a Marketing Plan, BMedical shall provide reasons to the Reseller for rejecting the Marketing Plan in whole or in part.
- 13.2 Without limiting any other term of this Agreement, BMedical may request changes to the Marketing Plan after it has been agreed between the parties by submitting to the Reseller a written request containing the details of the changes.
- 13.3 The Reseller must obtain the prior written approval of BMedical in relation to any new, revised or variation to the Marketing Plan to be adopted in relation to the Products.
- 13.4 The Reseller may enter into such lawful agreements as it deems desirable to market, promote and/or sell the Products in the Territory in accordance with this Agreement.
- 13.5 The Reseller must not make or publish any disparaging remarks or comments about the Products, BMedical or do anything to deface, obscure or remove from any of the Products any Intellectual Property.

14 Complaints and Injuries

- 14.1 The Reseller must maintain a database of all complaints, comments, Claims and/or Consumer deaths, injuries or illnesses (together, the "Complaints") made known or notified to the Reseller or of which the Reseller becomes aware or ought to be reasonably aware in relation to, arising from or connected with the Products or any defects in the Products.
- 14.2 The Reseller must provide BMedical full details of the Complaints within twenty-four (24) hours of receiving the Complaints or having knowledge of the Complaints or immediately upon the request of BMedical to provide the details of any Complaints.

15 Title and Risk

- 15.1 The Reseller acknowledges and agrees that no title to the Products will pass to the Reseller until payment of all monies owed to BMedical has been received in full by BMedical.
- 15.2 Risk of Loss or damage to the Products will pass to the Reseller at the time of dispatch from BMedical's nominated warehouse. BMedical shall not be responsible for any Loss or damage to the Products in transit. Insurance for the Products in transit will not be arranged by BMedical. The Reseller shall be responsible for the insurance of the Products in transit. The Reseller shall provide proof of such insurances to BMedical if requested.
- 15.3 Until the Price (and all associated costs and charges) have been paid in full to BMedical:
- legal ownership of the Products shall remain with BMedical;
 - BMedical may enter the Reseller's premises (or any premises where the Products are located), without notice and without liability for trespass or any resulting damage and may retake possession of the Products. All costs and expenses incurred by BMedical as a result of taking action to retake possession of the Products, together with transportation and storage charges, must be paid by the Reseller to BMedical on demand;
 - BMedical may keep or resell any repossessed Products;
 - if the Reseller resells the Products without first having paid BMedical for them, the Reseller shall hold that part of the proceeds of the sale, which represents the Invoiced Price of the Products, in a separate identifiable account as the beneficial property of BMedical and shall pay the amount to BMedical on request; and
 - notwithstanding anything contained in subclauses 15.3(a)-(d), BMedical shall be entitled to maintain its legal rights against the Reseller for the Price of the Products.
- 15.4 Until such time as the Reseller becomes the owner of the Products, the Reseller will:
- store the Products separately and marked on the premises;
 - ensure the Products are kept in their original condition;
 - secure the Products from risk, damage or theft; and
 - keep the Products fully insured against all common business risks. The Reseller shall provide proof of such insurances to BMedical if requested.
- 15.5 Where the Reseller makes a new product from the Products, whether deemed as finished or not, or the Reseller mixes the Products procured to create an alternate product, the Reseller agrees:
- that, until payment of all sums owing to BMedical is received, the ownership of the new product passes to BMedical; and
 - that, until payment of all sums owing to BMedical is received, these new products will be held on trust for BMedical.
- 15.6 In the event the Reseller dies, withdraws payment or calls a meeting of its creditors, becomes insolvent, declares bankruptcy, enters into liquidation, has a winding up application lodged against it or has an administrator appointed, BMedical may, without prejudice to its other rights under this Agreement, repossess the Products.

16 PPSA, Security and Charge

- 16.1 The interest of BMedical in the Products and all proceeds from the sale of the Products by the Reseller to a third party is a security interest. BMedical and the Reseller agree to enter a separate security agreement in writing if requested by BMedical.
- 16.2 The Reseller consents to BMedical registering its security interest on the *Personal Property Securities Register* ("PPSR") and agrees to provide all assistance reasonably required by BMedical to facilitate registration.
- 16.3 Until such time as title to the Products has passed to the Reseller as contemplated by clause 15 of this Agreement, the Reseller agrees not to in any way assign, charge, lease or otherwise deal with, or create, a security interest over, the Products.
- 16.4 The parties agree that this clause will not prohibit the Reseller from selling the Products in the ordinary course of business.
- 16.5 The Reseller acknowledges and agrees that BMedical may apply to register a security interest in the Products at any time before or after Delivery of the Products. The Reseller waives its right under section 157 of the *Personal Property Securities Act 2009* (Cth) ("PPSA") to receive notice of any verification of the registration.
- 16.6 If the Reseller defaults in the performance of any obligation owed to BMedical under these Terms and Conditions, or any other agreement with BMedical to supply Products to the Reseller, the Reseller may enforce its security interest in any Products by exercising all or any of its rights under the Terms and Conditions or the PPSA.
- 16.7 To the maximum extent permitted by law, the Reseller and BMedical agree that the following provisions of the PPSA do not apply to the enforcement by BMedical of its security interest in the Products: sections 95, 125, 130, 135, 142 and 143.
- 16.8 Despite anything to the contrary contained in these Terms and Conditions or any other rights which BMedical may have:
- where the Reseller and the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Reseller and the Guarantor agree to mortgage and/or charge all of their joint and/or several interests in the said land, realty or any other asset to BMedical or BMedical's nominee to secure all amounts and other monetary obligations payable under these Terms and Conditions;
 - the Reseller and the Guarantor acknowledge and agree that BMedical (or BMedical's nominee) shall be entitled to lodge a caveat. The Reseller and the Guarantor shall give their written consent in registrable form to the lodgement of a non-lapsing caveat immediately on BMedical's request and the Reseller and the Guarantor shall not object to the lodgement or upholding of said caveat or take any

- steps to have any such caveat removed from the land titles office register. This caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met;
- should BMedical elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Reseller and Guarantor shall indemnify BMedical from and against all of BMedical's costs and disbursements, including legal costs on a solicitor and client basis; and
 - the Reseller and Guarantor agree to irrevocably nominate, constitute and appoint BMedical or BMedical's nominee as the Reseller's and Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause.

17 Intellectual Property

- 17.1 All legal and beneficial ownership of the Confidential Information, Intellectual Property and BMedical Materials (together, the "Materials") are reserved to the true and lawful owners. Nothing in this Agreement will be taken to constitute a transfer, assignment or grant of any ownership rights in any of the Materials.
- 17.2 The Reseller acknowledges that BMedical is the lawful owner, licensee or duly authorised or registered user of all the Intellectual Property in, or connected with, the Products and that the Reseller's right to use the Intellectual Property is derived solely from this Agreement. The Reseller's right to use the Intellectual Property is limited to the operation of the Reseller's business in accordance with this Agreement.
- 17.3 The Reseller is entitled during the Term to use BMC Medical's and BMedical's Intellectual Property including all trademarks as it may reasonably require for the sole purpose of effectively marketing, promoting or selling the Products in the Territory. The Reseller must not use BMC Medical's or BMedical's Intellectual Property for any other purpose without the prior written consent of BMedical.
- 17.4 The Reseller shall not do anything to infringe BMC Medical's or BMedical's Intellectual Property, or engage in the disassembly, deconstruction or reengineering of BMedical's Intellectual Property.
- 17.5 Where BMedical is the manufacturer or contract manufacturer of Products which contribute to the Reseller's designs and specifications, the Reseller indemnifies BMedical against all Claims, Losses, damages and costs that BMedical or related parties may suffer as a result of a Claim by a third party.
- 17.6 The Reseller indemnifies BMedical with respect to any infringement of BMC Medical's or BMedical's Intellectual Property. The Reseller shall be responsible for any Claims, Loss, damages and costs incurred as a result from any infringement relating to an agreement between BMedical and the Reseller. BMedical reserves the right to terminate any agreement in relation to any such infringement.

18 Confidentiality

Any Confidential Information concerning BMC Medical and/or BMedical obtained by the Reseller during the Term of this Agreement shall remain the absolute property of BMedical, shall remain secure and held in absolute confidence by the Reseller, and must not be disclosed by the Reseller to any third party either during the Term or following the expiration or termination of the Agreement. The Reseller undertakes not to use or disclose to any competitor, distributor, supplier, manufacturer, importer or any other Person any of BMC Medical's or BMedical's Confidential Information or Intellectual Property.

19 Warranties

- 19.1 BMedical warrants that for a period of:
- five (5) years in respect of CPAP and BiPAP machines; and
 - three (3) months in respect of CPAP Masks,
- commencing on the date of sale of the Products to the Consumer, so long as it is within six (6) months of the sale of the Products to the Reseller, BMedical will, for all defects which in the sole and absolute determination of BMedical constitute a major failure or a non-major failure which cannot be remedied, provide a refund for the Product to the Reseller or replace the Product with a product of the same type or of similar value if the Product is not reasonably available to BMedical, and for all defects which in the sole and absolute determination of BMedical constitute a non-major failure which can be remedied, BMedical will in its discretion either repair, replace or refund the value of the Product for the Reseller, provided that:
- the Consumer notifies the Reseller of the alleged defect or potential issue immediately upon becoming aware of the alleged defect or potential issue;
 - the Reseller works to their best ability to troubleshoot the issue and verify the issue for the Consumer;
 - if required, the Reseller contacts BMedical to confirm the issue and if required obtains a return authorisation number from BMedical;
 - the Reseller provides any information or documents relating to or connected with the alleged defect or potential issue, including any other relevant or associated information, to BMedical or immediately upon request of BMedical;
 - if authorised in writing by BMedical, the Reseller will deliver the Product to BMedical for inspection and repairs, replacement or refund, as the case may be; and
 - all defective Products must be returned to BMedical at its nominated return address and include details of the fault.
- 19.2 BMedical's obligations under clause 19.1 are conditional on the completion of all obligations of the Reseller and Consumer under clause 19.1 of this Agreement.
- 19.3 The warranties at clause 19.1 exclude any Products or part of any Products that have become damaged or defective as a direct or indirect result of:
- the improper adjustment, calibration or operation of the Product by the Reseller and/or the Consumer;
 - the use of accessories including consumables, hardware or software which were not manufactured, or approved in writing by, BMedical;
 - any contamination or leakages caused or induced by the Reseller and/or Consumer;
 - any modifications, alterations or tampering of the Product which were not authorised in writing by BMedical;
 - any misuse of the Product by the Reseller and/or Consumer or anyone for whom the Reseller and/or Consumer has legal responsibility (including a minor);
 - any use or operation of the Product outside of the physical, electrical or environmental specifications of the Product;
 - inadequate or incorrect site preparation or storing of the Product;
 - inadequate or improper maintenance of the Product;
 - without derogating from the foregoing, this limited warranty does not extend to:
 - nonconformities, defects or errors in the Product due to accident, abuse, misuse or negligent use of the Product;
 - defects, errors or nonconformities in the Product due to modifications, alterations, additions or Product changes not made or authorised to be made by BMedical;
 - normal wear and tear; or
 - damage caused by force of nature or act of any third party.
- 19.4 All transportation charges incurred in returning defective Products, or any of its component parts, for repair, together with the cost of returning them to the Reseller, must be paid by the Reseller.
- 19.5 If the Reseller is deemed a "Consumer" under the *Competition and Consumer Act 2010* (Cth) ("**Australian Consumer Law**"), the Australian Consumer Law may imply into these Terms and Conditions warranties or conditions and impose obligations which cannot be excluded, restricted or modified and these Terms and Conditions are read subject to such statutory provisions. All other conditions, warranties, representations, liabilities and obligations, whether implied or imposed by statute, including any conditions or warranties as to merchantability, fitness for purpose or correspondence with description, are excluded to the extent permitted by law.

- 19.6 The Reseller warrants and represents to BMedical, on an ongoing basis, that:
- it will comply with all Laws, and the requirements of any relevant authority or regulator relating to the promotion, advertising, marketing or sale of the Products;
 - it has and will continue during the Term to have all licences, authorisations, consents, approval and permits required by all applicable Laws in order to perform its obligations under this Agreement, and otherwise complies and will continue to comply with all Laws applicable to the performance of those obligations;
 - the promotion, advertising, marketing or sale of the Products by the Reseller will not infringe the rights (including Intellectual Property rights) of any third party; and
 - it will not do anything or omit to do anything which, in BMedical's opinion, may adversely affect the BMedical's business or brand or the reputation of BMedical.
- 20 Indemnity and Limitation of Liability**
- 20.1 The Reseller will during and after the Term indemnify BMedical and hold it harmless from all direct and indirect damages, losses, Claims, injury, expenses and costs which BMedical incurs, suffers or is held liable for in respect of any action, demand, claim or litigation as a result of:
- any acts of the Reseller, including any unlawful or wrongful act or omission, which has the effect or consequence of rendering BMedical liable to any third party or the Consumer under any Law;
 - any breach by the Reseller of this Agreement, including any tort or negligence by the Reseller in connection with this Agreement;
 - any third-party claim arising directly or indirectly from:
 - a breach by the Reseller of any of its obligations or warranties under this Agreement; or
 - a negligent, wilful or otherwise wrongful act or omission of the Reseller or any of its employees, servants or agents;
 - fraudulent or dishonest acts or omissions of the Reseller or any of its employees, servants or agents;
 - any breach by the Reseller of any applicable Laws or any rules, recommendations, guidelines or codes of conduct;
 - any breach by the Reseller of its obligations or warranties under this Agreement;
 - the death of, or personal injury to, any person, to the extent caused by any act or omission of the Reseller or any of its employees, servants or agents;
 - any damage to, or loss or destruction of, any real or tangible personal property, to the extent caused by any act or omission of the Reseller or any of its employees, servants or agents; and
 - any legal costs, charges and expenses arising in respect of subparagraphs (a)-(h) above.
- 20.2 Liability of BMedical to the Reseller arising out of or in connection with any Product ordered by the Reseller shall be limited to the Price paid by the Reseller for such Product. BMedical will not be liable for indirect, incidental, special, consequential, or punitive damages, of any nature or kind whatsoever including but not limited to loss of anticipated profits, loss of revenue, loss of production, loss of business opportunity, downtime, loss of use of equipment or any installation, system or facility, or for any latent defects or any other defects that might appear after the lapse of the warranty periods described at subclauses 19.1(a) and (b) above.
- 20.3 The Reseller shall rely on its own knowledge and expertise in selecting Products for any purpose, and any information or advice given by or on behalf of BMedical shall be accepted at the Reseller's risk.
- 20.4 BMedical shall not be liable nor responsible for any failure to comply with any requirements of the Reseller or any other person (whether relating to manufacture, design, fabrication, transportation, installation, removal and/or any other particular intended use of the Products) which are not precisely and accurately communicated in writing to BMedical prior to the Reseller entering into this Agreement.
- 20.5 To the fullest extent permitted by law, and except where consumer guarantees imposed by the Australian Consumer Law are applicable, no warranty, condition, undertaking or term (whether express or implied) as to the condition, quality, reliability, accuracy or completeness, performance, merchantability or fitness for purpose of the Products is given or assumed by BMedical.
- 20.6 BMedical is not liable for any other claims or damages including, but not limited to, claims for faulty design, negligent or misleading advice, damages arising from loss or use of the Products or any indirect, special or consequential damages or injury to any person, corporation or other entity.
- 21 Default**
- 21.1 An event of default ("Event of Default") is deemed to have occurred under this Agreement or any other agreement between the parties where:
- any amount is outstanding and due and payable by the Reseller to BMedical;
 - BMedical obtains unfavourable reports on the financial standing of the Reseller (and the Reseller hereby authorises BMedical to conduct credit checks on the Reseller);
 - the Reseller ceases to trade;
 - an application is made to wind up or place the Reseller into insolvency or external administration;
 - an order is made for the Reseller to be wound up, deregistered or dissolved;
 - the Reseller becomes bankrupt, insolvent, enters into administration or receivership; or
 - any other event that indicates that the Reseller may not be able to pay their debts to BMedical as they fall due.
 - the Reseller fails to comply with any Terms and Conditions of this Agreement which in BMedical's sole opinion constitutes a breach of a material term of this Agreement;
 - the Reseller fails to follow any reasonable and lawful directions of BMedical;
 - BMedical has evidence that the Reseller is acting, or has acted, illegally or is, or has, engaged in illegal activity; or
 - BMedical has evidence that the Reseller has caused a person harm or has caused, or is intending to cause, BMedical harm.
- 21.2 If the Reseller commits an Event of Default under this Agreement, BMedical may, by notice to the Reseller at its discretion and without prejudice to another rights it may elect to suspend some or all of its obligations under this Agreement, suspend or terminate an Order, cease further deliveries and may retain any monies paid by the Reseller in relation to the Order and apply such monies against any Loss or damage incurred by BMedical in relation to the default or breach by the Reseller.
- 21.3 BMedical is not liable to the Reseller for any Claim, Loss or damage the Reseller may suffer because BMedical exercised its rights under subclause 21.2 of this Agreement.
- 21.4 No prior demand is required to be made by BMedical to the Reseller for the payment or performance of any term of this Agreement.
- 22 Termination**
- 22.1 If either party breaches a term of this Agreement and fails to remedy such breach within seven (7) days after service upon it of Notice of such a breach, either party may by Notice terminate this Agreement with immediate effect.
- 22.2 It is a breach of a material term of this Agreement by the Reseller and BMedical will be entitled to immediately terminate the Agreement without notice if the Reseller:
- commits an Event of Default;
 - in the sole and absolute opinion of BMedical, the Reseller is or has engaged in the conduct of marketing, promoting, supplying, resupplying, distributing or selling the Product to any Person that is not a Consumer or in any manner that competes with the Product or BMedical's business;
 - ceases to use its best efforts and endeavours to market, promote and sell the Product to the Consumer;
- fails to follow any reasonable and lawful direction given by BMedical for the purposes of safe guarding BMedical's Intellectual Property and Confidential Information.
- 22.3 BMedical will be entitled to be paid by the Reseller for all Products supplied, or to be supplied, to the Reseller, including the Price, fees and charges or any Loss incurred by BMedical in relation to the provision of such Products, to the date of termination of the Agreement by the Reseller or by BMedical, as the case may be.
- 22.4 Notwithstanding termination of this Agreement, the Agreement will continue to be binding on the parties and fully enforceable in respect to the rights and obligations of each party relating to:
- the payment of any sum;
 - any continuing obligations to any Consumers;
 - any Product warranty to Consumers (statutory or otherwise);
 - Confidential Information and Intellectual Property; and
 - obligations in this Agreement that are intended to apply after termination.
- 22.5 Notwithstanding anything elsewhere contained in this Agreement either party may terminate this Agreement immediately by giving Notice to the other party if the recipient party has breached any Law then applying to this Agreement or does any act or omits to do any act that could cause the terminating party to be in breach of any Law applicable to this Agreement.
- 22.6 On termination of this Agreement:
- each party must promptly return to each other all Confidential Information and Intellectual Property belonging to the other party. Where such Confidential Information is incapable of being returned in tangible form then each party warrants to the other that it will destroy all electronic records of such Confidential Information; in addition, if requested by BMedical, the Reseller must return to BMedical, or if required by BMedical, destroy, any marketing and promotional materials provided to the Reseller by BMedical, including without limitation the BMedical Materials; the Reseller must within ninety (90) days cease any and all advertising, marketing, promoting and/or selling of the Products and remove to the satisfaction of the BMedical any physical or electronic (including online) publications, advertising, marketing or promotional material of the Products within the Territory or otherwise;
 - the Reseller must promptly notify BMedical of all stock of the Products it has in its possession or under its control which are not required by the Reseller to fulfil any outstanding contractual obligations to Consumers;
 - BMedical has the right of first priority (but is not obliged) to buy back all of the stock of the Products held by the Reseller which the Reseller is not contractually obliged to sell to its Consumers. The price that BMedical will pay for the buy-back of the stock of Products will be the price per Product paid by the Reseller (less any set offs or deductions of amounts owing by the Reseller to BMedical). For the avoidance of any doubt, nothing in this subclause obliges BMedical to buy back the stock or to buy back any stock that is unfit for sale or has been damaged (including damage to packaging); and
 - in the event of BMedical buying back any stock of the Products from the Reseller, BMedical will take Delivery of any such stock at the date and time of payment. Delivery will be at the place where the stock is stored by the Reseller or as otherwise agreed by the parties.
- 22.7 The expiration or termination of this Agreement does not affect any rights, liabilities or obligations of the parties as a result of anything occurring before the expiration or termination of this Agreement.
- 23 Dispute Resolution**
- 23.1 Application**
- Without limiting any other rights of BMedical, if a dispute between the parties arises in relation to, or in connection with, this Agreement or its subject matter, then BMedical may direct the Reseller to comply with this dispute resolution clause. This dispute resolution procedure will not apply to events giving rise to a right of termination of this Agreement by BMedical where there is no legitimate dispute as to the occurrence of the event.
- 23.2 Dispute**
- If a dispute arises from this Agreement ("Dispute") then either party ("Complainant Party") will give to the other party a notice of dispute specifying the nature of the Dispute, what outcome the Complainant Party desires and what action the Complainant Party proposes be taken in order for the Dispute to settle ("Notice").
 - The parties must endeavour to resolve the Dispute set out in the Notice in good faith within ten (10) Business Days of the respondent party ("Respondent Party") receiving the Notice ("Resolution Period").
 - In the event that the parties are not able to resolve the Dispute themselves during the Resolution Period, the parties must then participate in mediation in accordance with this clause ("Mediation").
- 23.3 Mediation**
- If the parties do not agree within ten (10) Business Days from the end of the Resolution Period on:
- the procedure to be adopted in a mediation of the Dispute;
 - the timetable for all the steps in those procedures; and
 - the identity and fees of the mediator; then:
- the President of the Queensland Law Society will appoint the mediator and determine the mediator's fees;
 - each party agrees to pay for half the cost of the mediator; and
 - the parties must participate in the Mediation.
- 23.4 The parties must pay their own costs for attending at or being represented at the Mediation.
- 23.5 The parties must first comply with the dispute resolution procedures in this clause before applying for relief in any court (unless the relief required is urgent).
- 23.6 The parties must keep all aspects of any meeting held pursuant to this clause, except the fact of its occurrence, confidential and agree that all communications between the representatives at the meeting are made on a without prejudice basis.
- 24 Force Majeure**
- 24.1 BMedical is not liable for default or failure in performance of its obligations pursuant to this Agreement resulting directly or indirectly from acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, the elements, strikes, labour disputes, shortage of suitable parts, components, materials including ink, chemicals and paper, labour or transportation or any other cause beyond the reasonable control of BMedical.
- 24.2 If BMedical is affected by such circumstances, then BMedical shall promptly notify the other party in writing when such circumstances cause a delay or failure in performance of this Agreement and when they cease to do so.
- 24.3 If such circumstances continue for a period of more than seven (7) days, BMedical may terminate this Agreement by notice to the other party or continue with the Agreement on terms the parties may otherwise agree in writing.
- 25 Severability**
- Unenforceability of a provision of this Agreement does not affect the enforceability of any other provision. If any provision is void, voidable or unenforceable, it will be severed from the Agreement to the extent of the inconsistency.
- 26 Variation**
- No variation, modification or alteration of any of the terms of this Agreement is effective unless in writing and signed by each of the parties.

27 Notice

- 27.1 A notice or other communication to a party under this Agreement must be in writing and delivered to that party in one of the following ways:
- delivered personally; or
 - posted by prepaid post to their address for service (or an address as notified by the party or the party's solicitor in writing from time to time) when it will be treated as having been received on the third business day after posting; or
 - sent by email to their email address, when it will be treated as received when it is transmitted.
- 27.2 The Reseller agrees that it shall be deemed to have notice of any change to these Terms and Conditions and be bound by any subsequent versions of these Terms and Conditions as they may appear on the website <https://bmedical.com.au/> whether or not the Reseller has actual notice thereof.
- 27.3 A copy of any subsequent versions of these Terms and Conditions may also be obtained from BMedical on request via telephone or email.

28 Authority

Each party represents and warrants to the other party that it has the power and authority to enter into and perform this Agreement and to execute the obligations assumed or imposed upon it under this Agreement. If this Agreement is signed on behalf of the Reseller then the person signing covenants that they have the authority to sign this Agreement as a duly authorised agent of the Reseller and accepts personal responsibility for the performance of this Agreement.

29 Assignment and Subcontracting

- 29.1 BMedical may assign any or all of its rights and obligations under this Agreement to any other party at any time without the need to notify or obtain the approval of the Reseller.
- 29.2 BMedical may subcontract the whole or any part of the provision of the Products under this Agreement to suitably qualified professionals, save that BMedical remains liable to the Reseller for the Products under this Agreement.
- 29.3 The Reseller must not, without the prior written approval of BMedical:
- appoint sub-distributors, agents, licensees, franchisees or other representatives for the marketing, promotion, distribution and/or sale of the Products within or outside the Territory. BMedical may, in its sole, absolute and unfettered discretion, for any reason whatsoever, deny giving its approval under this subclause;
 - mortgage, charge or otherwise encumber the Reseller's rights, interests or entitlements under this Agreement; or
 - assign the Reseller's rights, interests or entitlements under this Agreement.

30 Waiver

- 30.1 The failure, delay or omission by a party to exercise any power or right conferred upon that party by this Agreement will not operate as a waiver of that power or right, nor will any single exercise of any power or right preclude any other future exercise of the power, or the exercise of any other power or right under this Agreement.
- 30.2 A waiver of any provision of this Agreement, or consent to any departure by a party from any provision of this Agreement, must be in writing and signed by all parties and is effective only to the extent for which it is given.

31 Relationship of the Parties

- 31.1 Nothing in this Agreement, or any circumstances associated with it or its performance, gives rise to a joint venture, partnership, employment relationship, franchise, agency, fiduciary or any other such relationship between the parties. The relationship between the parties shall at all times be that of independent contractors.
- 31.2 Neither party shall share or be responsible for the debts and liabilities of the other party nor have the authority to legally bind the other in any manner. Neither party may claim or hold itself out as having any other relationship, authority, right or entitlement to represent or act as agent of the other or to have any interest or shareholding in the other.
- 31.3 The Reseller acknowledges that:
- it has no authority to make any representations, warranties and/or commitments on behalf of BMedical; and
 - its relationship with BMedical is that of a distributorship and not a franchise and accordingly the provisions of the Franchising Code of Conduct do not apply.

- 31.4 The Parties agree that nothing in this Agreement will give rise to any fiduciary relationship between BMedical and the Reseller and neither Party owes any fiduciary duty to the other in respect of its conduct.

32 Costs

The Reseller will bear all costs, expenses, charges and/or fees howsoever incurred by it in relation to, arising from or in connection with this Agreement (or its compliance with any covenants or performance of any obligations under this Agreement) and BMedical shall not be required to pay, reimburse and/or indemnify the Reseller for any costs, expenses and/or other remuneration whatsoever or howsoever incurred by the Reseller.

33 General Covenants

- 33.1 These Terms and Conditions are subject to change without notice.
- 33.2 The Reseller must always act ethically in relation to its rights and obligations under this Agreement and in accordance with good corporate governance practices. The Reseller must act in good faith at all times towards BMedical and provide assistance and co-operation as practicable on request by BMedical.
- 33.3 Neither Party will in the course of conducting its business under this Agreement engage in conduct that is deceptive or misleading or is likely to deceive or mislead or constitutes a breach of any Law of the Territory.
- 33.4 The Reseller is solely responsible for and must at its own cost obtain all and any necessary Approvals for the Products to enable the Reseller to market, promote and sell the Products in the Territory to the Consumer.
- 33.5 The Reseller must comply with all Laws, regulations and rules which are or may be applicable to the marketing, promotion, advertising, sale, operation, use and/or servicing of the Products in the Territory.
- 33.6 Unless otherwise agreed in writing by BMedical, at the sole, absolute and unfettered discretion of BMedical, the Courts and/or Tribunals of any State or Territory in Australia will have exclusive jurisdiction in relation to all matters whatsoever concerning these Terms and Conditions. The Reseller irrevocably waives any objection to the venue selected by BMedical and/or its subsidiaries in relation to any legal proceedings concerning these Terms and Conditions. The laws of the State or Territory chosen by BMedical for any such legal proceedings will govern these Terms and Conditions. The Parties agree that any action arising out of or relating to these Terms and Conditions may only be brought before the Courts and/or Tribunals of any State or Territory in Australia of competent jurisdiction.
- 33.7 If the Reseller now or at any time in the future enters into this Agreement as a trustee, the trustee acknowledges and covenants that all the provisions of this Agreement are binding on the trustee both personally and in the trustee's capacity as trustee and are binding on the trustee's successors as trustee of the relevant trust fund. The trustee's liability will remain irrespective of any insufficiency in or lack of recourse to trust assets.