

**1. Definitions**

In this agreement:

"**Delivery Date**" means the date the Products are delivered to you.  
 "**GST**" means goods and services tax payable under the Goods and Services Tax Act 1985.  
 "**PPSA**" means the New Zealand Personal Property Securities Act 1999.  
 "**Products**" means all products and services agreed to be supplied by us to you.  
 "**Us, Our, We**" means Qenos Pty Ltd, its agents, servants, and employees.  
 "**Value Adding Process**" means using the Products in or subjecting the Products to any manufacturing, mixing or other value adding process, and "**Value Added Products**" means Products which have undergone Value-Adding Process.  
 "**You, Your**" means the person or entity who acquires Products from us.

**2. Orders**

We will acknowledge receipt of orders for Products placed by you as soon as possible. No order is accepted, and we are under no obligation to Supply you with Products, until the Products have been shipped.

**3. Quality & Claims**

- 3.1 We warrant that the Products are of merchantable quality and will comply with agreed specifications.
- 3.2 Any description of the Products we provide is given by way of identification only and the use of such description shall not constitute a contract of sale by description.
- 3.3 You will examine the Products and notify us in writing if the Products have any obvious defects within 30 days of delivery. If you don't notify us, then you accept the Products are of merchantable quality, free from obvious defects, and compliant with the agreed specification, if any. If you later discover latent defects in the Products, you will notify us immediately.
- 3.4 If you tell us the Products have defects, you will either return them to us, or if they can't be returned you will make them available for us to inspect and take samples.
- 3.5 If we determine the Products are defective, then we will pay (at our election):
- the cost of returning the Products that are capable of being returned;
  - the cost of delivery of replacement Products, if we elect to replace the Products;
  - the cost of disposing of the Products, where the Products are not capable of being returned; or
  - the cost of a full or part refund in respect of the Products.
- 3.6 To the extent permitted by law, our liability to you under this agreement is limited to the following, as we determine:
- replacing the Products or supplying equivalent Products; or
  - refunding the price paid in part or in full; and / or
  - paying the reasonable costs associated with recovering the Products.
- 3.7 We will not be liable for any special, indirect, or consequential loss or damage including but not limited to loss of anticipated profits arising in any manner, directly, or indirectly, out of the Products or the supply of the Products.
- 3.8 You assume all risk of loss, damage or injury to any person or property arising out of the use or possession of any Products sold to you, however they are used.
- 3.9 If the Products or any part are treated, processed (including a Value Adding Process), or changed in any manner then you will have no claim arising directly or indirectly relating to those Products. You are responsible for determining whether the Products are suitable for your intended use, whether or not such use is known to us.

**4. Advice**

You acknowledge that you have not relied on any service involving skill or judgement, or on any advice, recommendation, information or assistance provided by us in relation to the Products, their use or application.

**5. Delivery and Risk**

- 5.1 Unless otherwise specified, all prices for the Products are for delivery free into store at your premises.
- 5.2 We will arrange for delivery of the Products to you using our preferred carrier. If you have any special delivery requirements, you will pay us for any extra costs incurred.
- 5.3 The risk of loss and damage in the Products passes to you on delivery by us or our carrier.
- 5.4 Each delivery is a separate contract.
- 5.5 You warrant that you:
- have or will have and comply with all relevant permits or licences required to store and handle the Products; and
  - will take all necessary and appropriate precautions and safety measures for storing and handling the Products.
- 5.6 If you don't give us instructions sufficient for us to dispatch the Products to you within 14 days of us notifying you they are ready to send, then delivery is deemed to have taken place on the date we notified you. You will pay us storage charges payable monthly on demand until the Products are delivered to you.

**6. Title and use**

- 6.1 Title in the Products passes to you on payment in full for all Products. You may not resell any Products unless those Products are Value Added Products.
- 6.2 Until title in the Products passes to you, you hold the Products as bailee and fiduciary for us and as far as practicable you will store the Products in a way that clearly identifies them as our property. If you don't pay for the Products on time, we may demand the return of the Products. We may also enter any premises occupied by you without notice in order to search for and remove Products provided that we comply with your reasonable directions. These rights are in addition to any rights we may have under the PPSA.
- 6.3 Even if title in the Products has not yet passed to you, you may use the Products in a Value Adding Process. In such circumstances:
- title in the Products remains with us unless the effect of the Value Adding Process is to destroy the essential identity or character of the Products, notwithstanding any resulting benefit that may accrue to us;
  - where the essential identity or character of the Products is destroyed, you will hold such part of the Value Added Products as relates to the price of the Products on trust for us.
- 6.4 You acknowledge that if you sell any Products or Value Added Products prior to paying us in full for all Products, you sell them as our fiduciary agent and you will hold the price of the Products, or such part of the proceeds of sale as relates to the price of the Products, on trust for us.

- 6.5 If title in the Products has not passed to you or if the Value Added Products are held partially on trust for us, your implied right (if any) to sell the Products or the Value Added Products shall immediately terminate if any of the events listed in clause 8.2 happen. You will then return to us any Products and/or Value Added Products not paid for in full and we may sell or otherwise dispose of those products in any way and on any terms we choose.

**7. Delay in Delivery**

- 7.1 We will try to deliver the Products to you on the date requested by you, but we will not be liable for any loss or damage resulting from late delivery.
- 7.2 If we can't deliver the Products by the date requested by you for any reason, then we will let you know as soon as possible and tell you what steps we're taking to minimise the delay. If we do this, we won't be in breach of this agreement.

**8. Price, Payment, Default and Taxes**

- 8.1 (a) The price for the Products will be the current price at the Delivery Date which will be notified to you by us prior to the beginning of each calendar month.  
 (b) You must pay for the Products prior to the Delivery Date or as otherwise agreed;  
 (c) The price does not include sales tax, goods and services tax, or any other taxes and duties and you will pay any such amounts if they apply;  
 (d) Prices are subject to change without notice at any time and in the event that the price of the Products is increased, we will, before making the delivery, notify you of the increase and you will have the right to cancel the delivery of the Products to which the increase in price applies;  
 (e) We may at any time require payment in advance or cash on delivery from you.
- 8.2 If any of the following events happen, we may withhold further deliveries or end this agreement by giving you written notice, and without prejudice to any other action or remedy which we have or might otherwise have had, and all monies owing to us shall immediately become due and payable:
- you default on any payment or are unable to pay your debts when they fall due;
  - if you are a person, you commit an act of bankruptcy or has a controller or trustee appointed in respect of your estate or any part of your property or assets;
  - if you are a company, you pass a resolution for your winding up or enter into liquidation or have an application for winding up filed against you;
  - a receiver, receiver and manager, controller or voluntary administrator is appointed over any part of your property or assets;
  - you experience any analogous event having substantially similar effect to any of the events specified above.
- 8.3 We may at any time change or terminate your credit limit or payment terms by giving you written notice. If we do this, you may terminate this agreement by giving us 30 days' notice.
- 8.4 All amounts payable by you under this agreement are GST exclusive. If the supply of Products is a taxable supply, you will pay us the GST.
- 8.5 If this agreement requires a party to pay for, reimburse or contribute to any expense loss or outgoing ("reimbursable expense") suffered or incurred by the other party, the amount required to be paid, reimbursed or contributed by the first party will be the sum of:
- the amount of the reimbursable expense net of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense; and
  - if the other party's recovery from the first party is consideration for a taxable supply, and GST payable in respect of that supply.

**9. Returnable Packaging**

All returnable packaging in or on which Products are delivered remains our property and must not be used for any purpose except storing the Products. You will return all returnable packaging to us as soon as practicable after the Products have been removed. You will pay us the replacement cost of any returnable packaging that you don't return or that is returned in poor condition.

**10. General**

- This agreement supersedes any prior understanding or agreement between us relating to the Products including any terms contained in your order.
- Each clause and subclause of this agreement is separate and independent. If any clause or subclause is invalid or ineffective, the other clauses, subclauses or parts will not be affected.
- The failure by a party to insist upon strict performance of any term of this agreement is not a waiver of any rights.
- This agreement is governed by the laws in New Zealand and the parties submit to the non-exclusive jurisdiction of the courts there.

**11. Notices**

- A party notifying or giving notice in this agreement must give notice in writing to the address of the other party (as set out overleaf or as last notified by the other party) by leaving it at or sending it by prepaid post or sending to the other party's email address (as set out overleaf or as last notified by the other party).
- A notice given in person or emailed is received on that day. A notice that is mailed is received 7 days after posting.
- All email notices must include agreement identifying information in the subject line.
- To the extent permitted by law:
  - we need not give any notice and you waive your rights to receive any notice under the PPSA (including a notice of a verification statement and / or a copy of any financing change statement) in relation to a security interest in connection with this agreement;
  - we need not comply with any provision of the PPSA; and
  - you and we contract out of, and you waive your rights under sections 114(1)(a) and 107(2) of the PPSA,
 and where we have rights in addition to those in Part 9 of the PPSA, those rights continue to apply.