



STANDARD TERMS AND CONDITIONS OF SUPPLY

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STANDARD TERMS AND CONDITIONS OF SUPPLY FOR AUSTRALIA

The supply of Products by Medtronic Australasia Pty Ltd (ABN 47 001 162 661) (**Medtronic**) to the Customer will be subject to these terms and conditions of supply.

1. Definitions

In this document (including the Schedule):

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Consignment Contract means a contract between Medtronic and the Customer under which Medtronic supplies, and the Customer accepts, Goods on a consignment basis, as formed in accordance with clause 7.1.

Consignment Site, in respect of particular Consignment Stock, means the site where Medtronic makes Delivery of that Consignment Stock pursuant to an Order.

Consignment Stock means Goods supplied by Medtronic to the Customer on a consignment basis (including, without limitation, Goods that are contained, on Delivery, in packaging marked or labelled “consignment stock” (or words to similar effect)).

Contract means a Consignment Contract or a Sale Contract (as the context requires).

Customer means the person or legal entity by or on behalf of whom the relevant Order is made.

Delivery means:

- (a) in the case of Goods, Medtronic making the Goods available for physical collection by or on behalf of the Customer at the place for delivery stipulated in the Order (or otherwise by the Customer) and agreed to by Medtronic or, if no such place is stipulated by the Customer, the usual place for delivery to that Customer shown in Medtronic’s customer records; and
- (b) in the case of Services, Medtronic completing the performance of the required Services.

Diabetes Products means Goods that are for use in or in relation to the monitoring, treatment or management of diabetes.

Goods means any medical devices, instruments, machines, equipment, apparatus or other goods supplied or distributed in Australia from time to time by or on behalf of Medtronic or any of its related bodies corporate.

GST has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insolvency Event has the meaning given in clause 13.8.

Intellectual Property has the meaning given in clause 10.6.

Maximum Quantity, in respect of a particular type of Goods, means the maximum quantity of that type of Goods that Medtronic is prepared to have on consignment at the Consignment Site at any given time.

Medtronic Standard Terms means these standard terms and conditions of supply for Australia, as varied by Medtronic from time to time.

Order means an order (whether made in writing or orally) by the Customer:

- (a) to purchase Goods from Medtronic;
- (b) for Goods to be supplied by Medtronic to the Customer on a consignment basis; or
- (c) for Services to be supplied by Medtronic to the Customer, (as applicable).

Products means Goods or Services supplied, or agreed to be

supplied (as the context requires), by Medtronic to the Customer pursuant to an Order.

Returns Policy means Medtronic’s policy for the return of Goods in Australia (as amended from time to time), a current copy of which is set out in the Schedule.

Sale Contract means a contract between Medtronic and the Customer for the sale by Medtronic, and the purchase by the Customer, of Products, as formed in accordance with clause 2.7.

Saleable Condition, in respect of Goods, means that (in Medtronic’s reasonable opinion):

- (a) the Goods are in their original packaging, unused, unopened and undamaged, and without any label, sticker or marking placed by the Customer on either the Goods or the packaging; and
- (b) if delivered in sterile packaging, the Goods are of uncompromised sterility and integrity (examples of compromised integrity include broken sterilised seals and missing or damaged temperature gauges); and
- (c) if the Goods have an expiry date, the expiry date is not within the next 12 months.

Services means any repair, maintenance or other technical services in relation to any Goods.

Spine Products means Goods that are for use on or in relation to the spine.

2. Quotations and Orders

- 2.1 Any quotations from Medtronic are valid for a period of 30 days from the date of issue or otherwise as specified in the quotation.
- 2.2 Prices given by Medtronic in any quotation are applicable to that quotation only.
- 2.3 All Orders must be placed in the manner and form, and contain the information, required by Medtronic from time to time.
- 2.4 By making an Order, the Customer acknowledges that it is aware of the contents of, and agrees to be bound by, these Medtronic Standard Terms.
- 2.5 Medtronic may accept or reject an Order (in whole or part) in its discretion.
- 2.6 Medtronic’s acknowledgement or confirmation of receipt of an Order does not constitute acceptance of the Order unless Medtronic expressly states otherwise in writing.
- 2.7 A Sale Contract in relation to all or some of the Products the subject of an Order to purchase Products (the **Relevant Products**) will be formed by and upon the first to occur of:
 - (a) Medtronic giving notice in writing to the Customer of acceptance of the Customer’s Order in relation to the Relevant Products; or
 - (b) Delivery of the Relevant Products.
 In the case of Goods in Consignment Stock, a Sale Contract will be taken to be formed by and upon the Customer withdrawing the Goods for use or purchase, or upon the Goods ceasing to be in Saleable Condition or being lost or stolen, whichever occurs first.
- 2.8 Each Contract will be governed by these Medtronic Standard Terms and they apply to the exclusion of any other terms and conditions that the Customer attempts or purports to stipulate or incorporate in connection with

an Order (including any terms and conditions specified or referred to in or with the Order or in any other document provided by the Customer).

- 2.9 Neither Medtronic's acknowledgement of an Order nor its failure to object to any conflicting, different or additional terms and conditions proposed by the Customer will constitute, or be taken to constitute, an acceptance of those terms and conditions or a waiver of these Medtronic Standard Terms.
- 2.10 Medtronic may vary these Medtronic Standard Terms at any time. The revised Medtronic Standard Terms will apply to all Orders made after the varied Terms are published on Medtronic's website at www.medtronic.com.au. The Customer is responsible for ensuring that it has read and understood the latest version of these Medtronic Standard Terms.

3. Prices and GST

- 3.1 The purchase price for each Product ordered by a Customer will be:
- (a) the price for that Product quoted in writing by Medtronic to the Customer (or otherwise agreed in writing between the parties) in connection with the Order; or
 - (b) if no such quote was given or price agreed, the price set out in Medtronic's prevailing price list for the supply of the relevant Products in Australia, as in effect at the time the Product is supplied to the Customer.
- 3.2 All prices on any Medtronic price lists are subject to change without notice.
- 3.3 Medtronic will be entitled to charge the Customer a surcharge of \$30.00 (plus GST) for any Order equal to or less than \$300.00 (plus GST).
- 3.4 If GST is levied or imposed on or in respect of any supply made by a party (the **Supplier**) under or in connection with a Contract, then the recipient of that supply (the **Recipient**) must, in addition to the purchase price or other consideration payable for that supply under these Medtronic Standard Terms (**GST Exclusive Consideration**), pay the Supplier an amount on account of GST calculated by multiplying the GST Exclusive Consideration by the GST rate prevailing at the time that the supply is made.
- 3.5 The Recipient is only required to pay an amount for GST in respect of a taxable supply to it once the Recipient has received a tax invoice from the Supplier.
- 3.6 If a payment to a party under or in connection with a Contract is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will first be reduced by the amount of any input tax credit to which that party is entitled for an acquisition to which that loss, cost or expense relates and then, if consideration for a taxable supply, will be increased on account of GST in accordance with clause 3.4.
- 3.7 In clauses 3.4 to 3.6, words or expressions that are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning as in that Act.

4. Payment

- 4.1 The Customer must pay Medtronic the purchase price for the Products and any other amounts (including any GST) payable in relation to a Contract, in full, within 30 days of the date of the invoice issued by Medtronic in respect of those Products.
- 4.2 If Medtronic, in its sole discretion, requires advance cash payment or satisfactory security, then the Customer must provide the required payment or security to Medtronic prior to any future supply of Products by Medtronic.
- 4.3 In the event that any amount not paid is referred to a debt collector or legal counsel for collection, the Customer must reimburse Medtronic, on a full indemnity basis, for all legal costs and expenses incurred in pursuing payment of the overdue amount.
- 4.4 The Customer may not set off any money owing or alleged to be owed by Medtronic against money due by the Customer to Medtronic.
- 4.5 The Customer must, on demand by Medtronic, pay interest calculated at the rate of 2% per annum above the "90 day dealers bill rate" as published in The Australian Financial Review newspaper on or as near as possible to the due date (or, if that rate ceases to be published, the rate nominated by Medtronic), on any amounts due and unpaid in relation to a Contract, calculated on daily balances from the due date for payment until the actual date of payment and capitalised monthly.

5. Delivery

- 5.1 Subject to clause 5.2, and unless agreed otherwise, Delivery of Goods the subject of an Order will be made on the basis of Free Into Store (FIS) or Delivered Duty Paid (DDP) as defined in INCOTERMS 2010.
- 5.2 If the Customer requests express freight of Goods or any non-standard form of delivery, Medtronic may, in its discretion, require the Customer to bear all freight and delivery costs incurred by Medtronic in satisfying the Customer's requirements. Where applicable, any such costs will be invoiced to and payable by the Customer at the same time as the purchase price for the relevant Goods.
- 5.3 Any dates for Delivery given by Medtronic to the Customer are estimates only and Medtronic will not be liable for failure to deliver, or for any delay in Delivery, of any Products, however arising.
- 5.4 Medtronic reserves the right to make partial deliveries of Goods the subject of an Order or deliveries by instalments and to issue interim invoices to the Customer. In those circumstances, a separate Contract will be formed in respect of each separate Delivery of Goods.
- 5.5 The Customer agrees to accept Delivery of any Goods the subject of an Order at any time between 9.00am and 5.00pm on a business day.
- 5.6 If the Customer refuses or is unable to accept Delivery of any Goods in accordance with clause 5.5, the Customer will, in addition to being liable to pay for the Goods, be liable to pay Medtronic for all costs of freight, storage, insurance, interest and extra costs of handling that may be incurred by Medtronic as a result of such refusal or

inability to accept Delivery.

- 5.7 Any unloading or loading of Goods at the Delivery place will be the Customer's responsibility, unless otherwise agreed in writing by Medtronic.
- 5.8 An acknowledgement or receipt for Products signed on behalf of the Customer will be conclusive evidence of Delivery.

6. Risk and title

- 6.1 Risk in all Goods passes to the Customer at the time of Delivery.
- 6.2 Full legal and equitable ownership of, and title to, Goods (other than Consignment Stock) passes to the Customer at the time of Delivery or the time at which the Customer makes full payment to Medtronic (in cleared funds) of all amounts payable for the Goods under the relevant Sale Contract, whichever occurs later. Medtronic retains full ownership of and title to all Goods until that time.
- 6.3 Medtronic will retain full legal and equitable ownership of, and title to, all Goods that are Consignment Stock until:
 - (a) the Customer withdraws those Goods from the Consignment Stock for use or purchase pursuant to a Consignment Contract; or
 - (b) if the Goods cease to be in a Saleable Condition or are lost or stolen, the time at which the Customer makes full payment to Medtronic (in cleared funds) of the purchase price for those Goods and any other amounts payable in respect of the Goods under these Medtronic Standard Terms
 (whichever occurs first).

7. Consignment terms and conditions

- 7.1 A Consignment Contract in relation to all or some of the Goods the subject of an Order for consignment of Goods (the **Relevant Goods**) will be formed by and upon the first to occur of:
 - (a) Medtronic giving notice in writing to the Customer of acceptance of the Customer's Order in relation to the Relevant Goods; or
 - (b) Delivery of the Relevant Goods.
- 7.2 Within 10 days of any Goods in Consignment Stock being used by the Customer, the Customer must issue to Medtronic an Order to purchase the used Goods. The Customer's Order must include a description of the Goods, the Consignment Site and any other information requested by Medtronic. Medtronic will promptly issue to the Customer an invoice for such Goods at the applicable purchase price, as determined under clause 3.1 (plus any GST).
- 7.3 The Customer must take out and maintain adequate insurance cover for the loss, damage or destruction of any Consignment Stock, following Delivery to the Customer, in accordance with its policies and usual practices, and Medtronic's interest in such Consignment Stock must be recorded on the policy if possible. If requested, the Customer must promptly provide a certificate of currency for each policy to Medtronic.
- 7.4 The Customer must, in respect of all Consignment Stock held by the Customer:
 - (a) segregate the Consignment Stock from all other goods of the Customer or any third party and

conspicuously identify the Consignment Stock as Medtronic's property;

- (b) maintain suitable premises for the storage of all Consignment Stock and store all Consignment Stock in a safe and secure manner to avoid any loss, theft, damage or unauthorised access (including by following any instructions provided by Medtronic or the manufacturer in relation to storage and ensuring that Consignment Stock is stored within the prescribed temperature range and in an area free from pests) and the Customer accepts full responsibility for any loss or damage arising from a failure to comply with this clause;
 - (c) use reasonable endeavours to use first the Goods in the Consignment Stock that have the nearest expiry date (if relevant) - that is, to use Products on a "first-expiring, first-out" basis;
 - (d) keep records of its use of Consignment Stock, including date of use and serial and product codes;
 - (e) segregate any potentially contaminated Goods from the Consignment Stock to avoid cross-contamination and to prevent distribution to other users and/or customers; and
 - (f) advise Medtronic immediately if any part of the Consignment Stock is moved.
- 7.5 The Customer may not move or transfer Goods in the Consignment Stock to another site without Medtronic's prior written consent.
 - 7.6 Where Medtronic gives the Customer notice in writing of a Maximum Quantity in respect of any type of Goods in the Consignment Stock, Medtronic will replenish the Consignment Stock at the Consignment Site to, and only to, the Maximum Quantity for the relevant type of Goods specified in that notice (as varied from time to time).
 - 7.7 Notwithstanding clause 7.6, if any Goods in the Consignment Stock are in short supply, Medtronic may allocate the available supply of those Goods in the manner that Medtronic considers in its absolute discretion the most equitable.
 - 7.8 Medtronic retains the right to decrease the Maximum Quantity for any type of Goods in the Consignment Stock to a level in keeping with the number of that type of Goods purchased by the Customer per annum.
 - 7.9 The Customer agrees to grant Medtronic access to the Consignment Site during business hours to carry out quarterly stocktakes of the Consignment Stock, and at other times on reasonable notice. Any Goods not in a Saleable Condition will not be counted as part of the Consignment Stock for the purposes of the stocktake.
 - 7.10 The Customer must issue a purchase order in order for Medtronic to replenish any shortfall in the Consignment Stock, including for any Goods that are not in a Saleable Condition.
 - 7.11 Medtronic will be entitled to invoice the Customer for Goods in Consignment Stock that are not in a Saleable Condition within 30 days of its discovery of such Goods.
 - 7.12 Medtronic will endeavour to notify the Customer of any recent or impending obsolescence of Goods in the Consignment Stock. The Customer agrees either to return such Goods (subject to compliance with the Returns Policy) or to issue to Medtronic a purchase order for such Goods within 14 days of being notified of obsolescence.

8. Cancellation

- 8.1 The Customer may not under any circumstances cancel an Order without Medtronic's consent and except upon terms which will indemnify Medtronic against any and all loss, costs and charges resulting from the cancellation.
- 8.2 If Medtronic consents to the Customer's cancellation of an Order for Goods and the Goods have already been collected or dispatched from Medtronic's warehouse (whether or not received by the Customer), the Customer must pay to Medtronic a restocking fee of \$65.00 (plus GST) or 15% of the value of those Goods, whichever is the greater.
- 8.3 No alterations to specifications in an Order, including quantity, type, Delivery or design details, may be made without the written consent of Medtronic and subsequent adjustment or confirmation of prices by Medtronic.
- 8.4 Medtronic reserves the right to change or modify the design of any of its Goods without any obligation to furnish or install such changes or modifications on Goods previously or subsequently supplied.

9. Returns Policy

- 9.1 If the Customer claims that any Goods do not conform to the description set out in the Order or have been short-delivered or were damaged on or prior to Delivery, then the Customer will give written notice to Medtronic within 7 days after Delivery and preserve the Goods intact and make them available for inspection by Medtronic's representatives at the Customer's or Medtronic's premises, as Medtronic may elect.
- 9.2 The procedure and conditions for the return of Goods are set out in the Returns Policy. Medtronic will not accept Goods for return, exchange or credit unless the requirements of the Returns Policy are strictly satisfied (or otherwise required by law).
- 9.3 Where Medtronic accepts the return of any Goods from the Customer, the Customer must pay to Medtronic a restocking fee of \$65.00 (plus GST) or 15% of the value of the Goods being returned, whichever is the greater. However, this fee is not payable where the Goods are in Consignment Stock or are returned because they were damaged on or prior to Delivery, incorrectly delivered due to an error by Medtronic, or faulty or defective.
- 9.4 Where Delivery is made on the basis of Ex-Works (as defined in INCOTERMS 2010) from Medtronic's premises, any claims for shortage or damage in transit must be made by the Customer against the carrier. To the extent of any inconsistency between this clause and the Returns Policy, this clause prevails.

10. Intellectual Property and confidential information

- 10.1 The Customer acknowledges that all right, title and interest in and to Intellectual Property is the sole property of, or licensed by, Medtronic (as the case may be) and the Customer will gain no rights, title or interest in or to the Intellectual Property whatsoever.
- 10.2 The Customer specifically acknowledges Medtronic's exclusive rights to ownership of any modification, translation or adaptation of Products or Medtronic's documentation relating to Products and any other

improvement or development based thereon, whether developed, supplied, installed or paid for by or on behalf of the Customer or any customer of the Customer or otherwise.

- 10.3 The Customer may only use the Intellectual Property for any purposes reasonably necessary for, or reasonably incidental to, the use of Products for their intended purpose and must not allow any third party to use the Intellectual Property unless prior written consent has been obtained from Medtronic.
- 10.4 The Customer must not, and must not permit any person reasonably within its control nor procure any person to, modify, copy, clone or reverse engineer any Products, or copy, modify or decompile any of Medtronic's documentation relating to Products.
- 10.5 If the Customer receives any information from Medtronic in connection with Products that is, by its nature, confidential or that the Customer is or ought reasonably to be aware is confidential, the Customer must keep that information confidential and not disclose the whole or any part of the information to a third party unless: it receives the prior written consent of Medtronic; such information enters the public domain (other than as a result of a breach of any obligation of confidence owed by the Customer); such disclosure is reasonably necessary for any purposes described in clause 10.3; or such disclosure is required by law or the rules of any applicable stock exchange.
- 10.6 In this clause 10, **Intellectual Property** means any and all present and future intellectual property rights conferred or recognised by statute, common law or equity in or relating to any Products, including such rights in or in respect of patents, inventions, improvements, designs, drawings, instruction booklets, specifications, circuit layouts, computer software, programs and databases, technical data, formulae, componentry, confidential information, trade secrets, trademarks, business names, trade names, domain names, logos, knowhow and copyright, and any application or right to apply for registration of, and any licence or right to use, any such rights.

11. Warranties

- 11.1 To the maximum extent permitted by law, Medtronic makes no warranties, representations or guarantees to the Customer except to the extent expressly set out in these Medtronic Standard Terms or otherwise expressly stated by Medtronic in writing.
- 11.2 Unless otherwise expressly stated by Medtronic in relation to any Goods (and subject to clauses 11.3, 11.4 and 12.4), Medtronic warrants that all Goods supplied under a Sale Contract will be free from any material defect in workmanship and materials (**Standard Goods Warranty**) for a period ending:
 - (a) where no expiry date is expressly provided by Medtronic or the manufacturer for the Goods, 12 months from the date of the invoice in respect of the Goods; or
 - (b) where an expiry date is expressly provided by Medtronic or the manufacturer for the Goods, on that expiry date,
(**Warranty Period**).

- 11.3 Where, at the time of supply, any Goods include or are accompanied by an express, written warranty provided by the manufacturer or Medtronic, the Standard Goods Warranty does not apply.
- 11.4 The Standard Goods Warranty does not cover any damage to, fault in, or failure or malfunction of, any Goods where and to the extent that it results from any of the following:
- causes beyond the reasonable control of Medtronic, including but not limited to accident, abuse, misuse, mechanical or electrical overload, abrasion, corrosion, erosion or chemical attack or any force majeure event as described in clause 14;
 - incorrect assembly, installation, use, storage or application of the Goods by the Customer or a third party;
 - modification or repair of the Goods without Medtronic's prior written consent;
 - failure to comply with all written and oral instructions of Medtronic or the manufacturer regarding the assembly, installation, use, storage, application and/or processing of the Goods;
 - failure to perform required preventative maintenance; or
 - normal wear and tear.
- 11.5 If any defect in any Goods becomes apparent and is notified to Medtronic during the Warranty Period and is covered by the Standard Goods Warranty, Medtronic will (in its absolute discretion) repair or replace the Goods or take any other action contemplated by clause 12.1.
- 11.6 Unless otherwise expressly stated by Medtronic in relation to any Goods, any replacement or repaired Goods will be covered by the unexpired portion of the Warranty Period in respect of the original Goods or for a period of 90 days from the date of replacement or repair, whichever period is longer.
- 11.7 Medtronic warrants that all Services supplied under a Sale Contract will be rendered with due care and skill (**Standard Services Warranty**). If any breach of this warranty becomes apparent and is notified to Medtronic within 90 days after Delivery of the relevant Services, Medtronic will (in its absolute discretion) rectify or re-supply the Services (or any part of them) or pay the cost of having the Services (or any part of them) supplied again.
- 11.8 To the extent that any Products supplied by Medtronic are supplies to a 'consumer' as defined in the Australian Consumer Law, Medtronic will comply with any applicable consumer guarantees and following statements:
- where the Products are only Goods:
'Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also 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'
 - where the Products are only Services:
'Our services come with guarantees that cannot

be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

- to cancel your service contract with us; and*
- to a refund for the unused portion, or to compensation for its reduced value.*

You are also entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure you are entitled to have problems with the service rectified in a reasonable time and, if this is not done, to cancel your contract and obtain a refund for the unused portion of the contract'; and

- where the Products are Goods and Services:

'Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

- to cancel your service contract with us; and*
- to a refund for the unused portion, or to compensation for its reduced value.*

You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.'

- 11.9 The Standard Goods Warranty and Standard Services Warranty (**Standard Warranties**) are given by Medtronic Australasia Pty Limited of 2 Alma Road, Macquarie Park NSW 2113 (email: medcust@medtronic.com and phone: 1800 668 670).

- 11.10 To claim any entitlement under a Standard Warranty (as well as any reasonable expenses incurred in making the claim), the Customer must follow the procedure for making warranty claims set out in section 4 of the Returns Policy.

- 11.11 The Standard Warranties are in addition to any other rights or remedies available to the Customer under the Australian Consumer Law (or under any other applicable law in relation to Products).

12. Limitation of liability

- 12.1 To the maximum extent permitted by law, Medtronic's liability for a breach of any warranty, guarantee or condition given by or binding on Medtronic in relation to any Goods (including the Standard Goods Warranty and any guarantee that applies in relation to the Goods under the Australian Consumer Law) is limited to (as Medtronic may elect in its absolute discretion):

- the replacement of the Goods;
- the supply of equivalent Goods;
- the repair of the Goods;
- the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
- the payment of the cost of having the Goods repaired.

12.2 To the maximum extent permitted by law, Medtronic's liability for a breach of any warranty, guarantee or condition given by or binding on Medtronic in relation to any Services (including the Standard Services Warranty and any guarantee that applies in relation to the Services under the Australian Consumer Law) is limited to (as Medtronic may elect in its absolute discretion):

- (a) the supplying of the Services again; or
- (b) the payment of the cost of having the Services supplied again.

12.3 To the maximum extent permitted by law and notwithstanding any provision to the contrary in these Medtronic Standard Terms, Medtronic's total liability (whether that liability arises in contract, tort (including negligence) or equity, or under statute or otherwise) for any and all liabilities, losses, damages, costs or expenses (including legal costs and expenses, whether incurred or awarded) (together **Losses**) arising out of or in connection with the supply, sale or use of any Products or any breach by Medtronic of a Contract (including, but not limited to, any breach by Medtronic of the Standard Goods Warranty or the Standard Services Warranty) will be limited to the aggregate purchase price paid by the Customer to Medtronic for Products supplied under that Contract and in no event will Medtronic be liable for any Consequential Loss. **Consequential Loss** means: (a) any loss (whether direct or indirect, anticipated or otherwise) of profits, revenue, goodwill, savings, use of Products, data, contracts, business opportunities or reputation; (b) any special, consequential, indirect, exemplary or punitive Losses; and (c) any Losses suffered by the Customer that cannot reasonably be considered to arise naturally from the event, events or breach giving rise to the Losses (and, in each case, whether arising in contract, tort (including negligence) or equity, or under statute or otherwise).

12.4 To the maximum extent permitted by law, for any Goods or equipment forming part of any Goods that are not manufactured by Medtronic or any of its related bodies corporate, Medtronic's liability (if any) for such Goods or equipment will not exceed the liability of the manufacturer.

12.5 Except to the extent expressly stated in clauses 12.1 and 12.2, nothing in this clause 12 (or in any other provision of these Medtronic Standard Terms) excludes, modifies or restricts any rights or remedies a Customer may have under the Australian Consumer Law.

13. Default and termination

13.1 If:

- (a) the Customer defaults in any payment due to Medtronic under, or breaches any other term of, a Sale Contract or these Medtronic Standard Terms; or
 - (b) an Insolvency Event occurs in respect of the Customer,
- then Medtronic may, without prejudice to any other rights Medtronic has under any Contract, terminate the Sale Contract and/or any other contracts between Medtronic and the Customer by giving notice in writing to the Customer.

13.2 If the Customer fails to make any payment when due under a Contract or any Insolvency Event occurs in

respect of the Customer, Medtronic or its representative may (without notice and without prejudice to any of its other rights and remedies) recover, repossess and/or resell (and otherwise enforce its security interest in) any or all of the Goods in which title has not passed to the Customer under clause 6 above, and may (for that purpose, and by its representatives) enter the Customer's premises or any other place those Goods are stored by the Customer and remove the Goods (including by detaching them from any other goods to which they may be attached or from any land to which they may be fixed), without being liable for any loss or damage caused. Nothing in this clause limits Medtronic's rights or the Customer's obligations arising apart from under this clause 13.2.

13.3 Medtronic or the Customer may immediately terminate a Consignment Contract by giving notice in writing to the other party in any of the following circumstances:

- (a) the other party commits a material breach of that Contract or these Medtronic Standard Terms and has not remedied that breach within 30 days after receiving written notice from the party requiring it to do so; or
- (b) any Insolvency Event occurs in respect of the other party.

13.4 Either Medtronic or the Customer may terminate a Consignment Contract upon 60 days' prior written notice to the other party.

13.5 Upon termination of a Consignment Contract, the Customer agrees to:

- (a) issue a purchase Order for the Goods in the Consignment Stock that the Customer wishes to purchase; and
- (b) return to the Supplier the Goods in the Consignment Stock that the Customer does not wish to purchase provided however that the Goods must be in Saleable Condition.

13.6 Medtronic will issue an invoice to the Customer for any shortfall in the Consignment Stock and/or Products that are not in a Saleable Condition, at the applicable purchase price, as determined under clause 3.1 (plus any GST).

13.7 Upon termination of a Contract, all obligations and liabilities of Medtronic and the Customer will cease but any accrued rights and entitlements remain.

13.8 In this clause 13, an **Insolvency Event**, in respect of Medtronic or the Customer (the **relevant party**), means that:

- (a) the relevant party is or becomes insolvent, fails or is unable or admits its inability to pay its debts as they become due or is presumed to be insolvent under an applicable law (including, where applicable, section 459C(2) of the *Corporations Act 2001* (Cth));
- (b) the relevant party has bankruptcy, insolvency or winding up proceedings initiated or instituted by or against it;
- (c) a secured creditor or mortgagee enters into possession or disposes of the whole or any part of the relevant party's assets or business;
- (d) the relevant party makes any assignment for the benefit of, or proposes, enters into or makes any arrangement, compromise or composition with, its

- creditors;
- (e) the relevant party has a liquidator, provisional liquidator, receiver, receiver and manager, trustee in bankruptcy or an administrator or any other similar official appointed (whether or not by a court) to it or in respect of all or any part of its property, assets or undertaking;
- (f) the relevant party is otherwise wound up or dissolved; or
- (g) the relevant party ceases to carry on business or any licence or authorisation it requires to carry on business is suspended or revoked.

14. Force majeure

Medtronic's obligations under any Contract will be suspended and Medtronic will not be liable for any failure to fulfil or any delay in fulfilling any obligation arising from a Contract where, to the extent and for so long as, Medtronic is prevented from or delayed in carrying out that obligation, in whole or in part, because of any event of force majeure including, but not limited to, an accident, breakage or failure of machinery or apparatus, shortage of manufacturing capacity, withdrawal of business licence by the Government, war, riot, civil disorder, rebellion or revolution, act of terrorism, sabotage or other labor stoppage, epidemic, natural disaster such as flood, typhoon or earthquake, fire affecting Medtronic's operations or the operations of a supplier of Medtronic, inability to obtain fuel, power, raw materials, container or transportation facilities, any other act of God or any act or omission of a third party (other than an act or omission of an officer, employee, contractor or agent of Medtronic) that is outside the reasonable control of Medtronic.

15. Personal Property Securities Act 2009 (Cth) (PPSA)

- 15.1 The Customer acknowledges that, until such time as title in Goods has passed to the Customer in accordance with clause 6 above, the interest of Medtronic in Goods supplied under a Contract and in all proceeds from the sale of those Goods by the Customer to a third party is a security interest.
- 15.2 The Customer consents to Medtronic registering its security interest on the Personal Property Securities Register and agrees to provide all assistance (such as obtaining consents, signing and producing documents and entering into a further agreement in relation to the security interest) reasonably required by Medtronic for the purposes of:
 - (a) facilitating such registration;
 - (b) ensuring that Medtronic's security interest is enforceable against the Customer and third parties, perfected and otherwise effective, and has the priority required by Medtronic; and/or
 - (c) enabling Medtronic to exercise rights in connection with the security interest.
- 15.3 Until such time as title in Goods has passed to the Customer in accordance with clause 6 above, the Customer acknowledges and agrees that:
 - (a) those Goods will be held by the Customer as bailee and trustee for Medtronic;
 - (b) the Customer must separately store those Goods in such a way as to show clearly that they are the property of Medtronic and maintain the Goods in

- satisfactory condition;
- (c) the Customer must not in any way assign, charge, encumber, lease or otherwise deal with those Goods in such a manner as to create a security interest over the Products in favour of the Customer or any third party; and
- (d) the Customer must maintain adequate insurance cover for the loss, damage or destruction of the Goods in accordance with its policies and usual practices.

The parties agree that this clause will not prohibit the Customer from using or selling Goods in the ordinary course of business on the condition that the Customer must hold so much of the proceeds of any such sale as does not exceed the total outstanding amount owing by the Customer to Medtronic under a Contract relating to the Goods on trust for Medtronic in a separate account, and account to Medtronic for those proceeds on demand.

- 15.4 The Customer waives its rights to receive any notice under the PPSA (including any notice of verification statement) unless the notice is required by that Act and cannot be excluded.
- 15.5 Medtronic and the Customer agree that each Contract and all related information and document(s) are confidential and will not be disclosed to unauthorised representatives or third parties, except to the extent disclosure is permitted by these Medtronic Standard Terms or required by law. Medtronic and the Customer agree that neither Medtronic nor the Customer will disclose such confidential information pursuant to a request under section 275(1) of the PPSA.
- 15.6 To the extent permitted by law, Medtronic and the Customer agree that the following provisions of the PPSA will not apply in relation to the enforcement of Medtronic's security interest in any Goods (or the proceeds of sale of any Goods) supplied to the Customer under a Contract: sections 95, 117, 118, 121(4), 125, 127, 129(2), 129(3), 130, 132(3)(d), 132(4), 135, 136(5), 137(3), 142 and 143 of the PPSA.
- 15.7 For the purposes of section 14(6) of the PPSA, the Customer and Medtronic agree that Medtronic may apply any payments it receives from the Customer in connection with a Contract towards amounts owing to Medtronic in such order as it chooses (in its discretion).
- 15.8 Expressions defined in the PPSA have the same meaning when used in this clause 15 of the Medtronic Standard Terms.

16. Product recalls

In the event that any Goods supplied to the Customer are subject to a recall, field safety alert or hazard alert (whether initiated by Medtronic or any governmental agency or regulatory authority, and whether mandatory or voluntary), the Customer agrees to provide all assistance reasonably requested by Medtronic (including providing Medtronic with details of the identity and contact details of any person to whom the Goods have been supplied by the Customer) and to comply with all reasonable directions of Medtronic, in connection with the recall or alert.

17. Compliance with law

In carrying on the Customer's business, the Customer must comply with its obligations under the law including without limitation, the Customer must itself, and must procure any person reasonably within its control to:

- (a) not pay, offer or promise to pay, or authorise the payment of, any monies or anything of value, directly or indirectly, to any government official or employee, any official or employee of a state-run or state-owned or controlled enterprise or entity, any official or employee of a public international organisation, any candidate for political or public office, any official or employee of any political party, or any family member or relative of such persons or any political party for the purpose of influencing any act or decision of any such official, employee, candidate, political party, enterprise or entity, public organisation or government to obtain or retain business, or direct business to any person or entity, or for any other improper advantage or purpose; and
- (b) comply with all applicable export and import laws and regulations, including associated embargo and sanction regulations and, unless authorised by applicable governmental licence or regulation, not directly or indirectly export or re-export any technical information or software subject to these Medtronic Standard Terms (including direct products of such technical information or software) to any prohibited destination or country (including release to nationals, wherever they may be located, of any prohibited country) as specified in such applicable export regulations, and

in the event the Customer breaches its obligations under this clause, Medtronic may immediately terminate any Contract and/or other contracts and the Customer must indemnify and hold harmless Medtronic against any and all claims, losses, damages, penalties or fines related to such breach. This clause will survive the termination or expiration of a Contract.

18. Choice of law and jurisdiction

- 18.1 Each Contract and these Medtronic Standard Terms will be governed by and construed in accordance with the laws of New South Wales.
- 18.2 The Customer unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales.
- 18.3 A Sale Contract is not governed by the United Nations Convention on Contracts for the International Sale of Goods.

19. General

- 19.1 In this document (including the Schedule):
 - (a) the singular includes the plural and vice versa;
 - (b) another grammatical form of a defined word or expression has a corresponding meaning;
 - (c) a reference to a clause is to a clause of these Medtronic Standard Terms;
 - (d) a reference to a document includes a document in electronic form;
 - (e) a reference to \$ is to Australian dollars;
 - (f) a reference to any supply or other act by or of Medtronic includes a supply made, or other act done, on Medtronic's behalf by a person or entity acting as Medtronic's duly authorised representative or agent;

- (g) the terms "including", "includes", "for example", "in particular" and similar expressions are illustrative only and do not limit the meaning of the words preceding them; and
- (h) a reference to writing includes any mode of representing or reproducing words, figures, drawings or symbols in a visible form.

- 19.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from these Standard Terms, but the rest of the Standard Terms are not affected.
- 19.3 The waiver by Medtronic of any provision or breach by the Customer of any provision of a Contract will not be construed as a waiver of any other provision or breach of any other provision, or of any subsequent breach of the same or any other provision of the Contract.
- 19.4 Medtronic's failure to exercise or delay in exercising a right, power or remedy does not constitute a waiver of the right, power or remedy. Any waiver must be agreed in writing by Medtronic.
- 19.5 Any notice to be given to a party under a Contract must be in writing and must be sent by post, facsimile or email to the address, facsimile number (if any) or email address of that party specified or referred to below or such other address, facsimile number or email address as the party may from time to time notify the other party in accordance with this clause:
 - (a) in the case of Medtronic:
 - Address: 2 Alma Road,
Macquarie Park NSW 2113
 - Email to: medcust@medtronic.com; and
 - (b) in the case of the Customer, the address, facsimile number or email address specified in the Order or, if not so specified, noted in Medtronic's customer records as the contact address, facsimile number or email address for the Customer.
- 19.6 Where there is more than one Customer under a Contract, then the liability of each will be joint and several.
- 19.7 A Contract and any right or obligation of the Customer under it cannot be assigned or transferred by the Customer without the prior written consent of Medtronic.
- 19.8 Medtronic may sub-contract the performance of all or part of its obligations under a Contract.
- 19.9 A Contract may be varied only by agreement in writing of each party.
- 19.10 Notwithstanding anything to the contrary in these Medtronic Standard Terms, in the event that Medtronic is supplying Products pursuant to a current, written and signed agreement between Medtronic and the Customer, where there is any inconsistency between these Medtronic Standard Terms and that written agreement, the terms and conditions of that agreement will prevail to the extent of the inconsistency.
- 19.11 Notwithstanding anything to the contrary in these Medtronic Standard Terms, in the event that Medtronic is supplying Diabetes Products to the Customer pursuant to an Order made through the Medtronic MiniMed eShop, the terms and conditions of the MiniMed eShop will apply to the exclusion of these Medtronic Standard Terms.

SCHEDULE - POLICY FOR THE RETURN OF GOODS IN AUSTRALIA

This Policy is to be read in conjunction with the Medtronic Standard Terms and Conditions of Supply for Australia (**Medtronic Standard Terms**). Terms defined in the Medtronic Standard Terms have the same meaning in this Policy, unless the context requires otherwise.

1. Circumstances in which Goods may be returned

- 1.1 Subject to the terms of this Policy, Medtronic may accept the return of Goods sold or consigned by Medtronic to a Customer where it is satisfied that the Goods:
- were damaged on or prior to Delivery;
 - were incorrectly delivered (by type or quantity) due to an error by Medtronic;
 - are suitable for return in accordance with section 3.1 (and not excluded under section 3.3) below; or
 - have a fault or defect for which the Customer is entitled to make a claim under any applicable warranty given by, or statutory guarantee binding on, Medtronic (**Warranty Claim**).
- 1.2 The table below is a guide to the sections of this Policy that are applicable and relevant in the various circumstances covered by the Policy.

| Circumstances | Reference |
|---|--|
| Goods damaged on or prior to Delivery. Goods incorrectly delivered due to an error by Medtronic. | See section 2 for the procedure for arranging the return of these Goods. |
| Goods that the Customer wishes to return due to an incorrect order or "change of mind". | See sections 2 and 3 of this Policy for the procedure, conditions and fee for arranging the return of these Goods. |
| Faulty or defective Goods (including capital equipment and consumables) or defective Services. | See section 4 below for the procedure for making a Warranty Claim. |

- 1.3 No Goods will be accepted by Medtronic for return, exchange or credit unless the procedure and conditions set out in this policy are strictly satisfied (or otherwise required by law). Unauthorised returns will not be accepted and will be returned to the Customer at its expense.

2. Procedure for the return of Goods

- 2.1 To arrange for the return of Goods (other than faulty or defective Goods), the Customer must request an authorisation number (called an 'RGA Number') by contacting:
- for Diabetes Products, Customer Service on 1800 777 808 within Australia or +61 2 9857 9000 worldwide or rs.anzsyddiabetes@medtronic.com;

- for Spine Products, the Medtronic Spine representative for the Customer; or
- for all other Goods, Customer Service on 1800 668 670 or medcust@medtronic.com.

- 2.2 An RGA Number should be requested:
- in the case of Goods damaged on or prior to Delivery or incorrectly delivered (whether due to an error by Medtronic or the Customer), within 7 days of Delivery; or
 - otherwise, within 3 months of Delivery.
- 2.3 The Customer will need to provide the following information when requesting an RGA Number:
- purchase order number or dispatch note number for the Goods to be returned;
 - product code for those Goods;
 - number or quantity of those Goods;
 - detailed reasons for the return of the Goods; and
 - if Medtronic will be responsible for collecting the Goods, the address of the premises from where the Goods are to be collected together with the name, telephone and fax numbers, and email address of the Customer's contact person.
- 2.4 Where an RGA Number is issued for the return of any Goods damaged on or prior to Delivery or incorrectly delivered due to an error by Medtronic, or for the return of any Goods in Consignment Stock, Medtronic will arrange for the collection of the Goods via Medtronic's appointed carrier (at Medtronic's expense). The Medtronic Spine representative may make alternative return arrangements with the Customer for the return of Spine Products.
- 2.5 In all other cases, the Customer must (at the Customer's expense) deliver or arrange the delivery of the relevant Goods to Medtronic (to the address specified in section 2.6 below).
- 2.6 Goods to be returned to Medtronic (whether via its appointed carrier or otherwise) must be included in packaging that is clearly addressed as follows:
- Medtronic Australasia Pty Limited - Returns
RGA [write RGA number]
c/- DHL Supply Chain
52C Huntingwood Drive
Huntingwood NSW 2148.
- 2.7 If requested by Medtronic, returned Goods must be accompanied by: evidence of the original purchase and/or delivery of the Goods; written confirmation by the Customer that the Goods have been stored under any specific, required conditions (eg, a temperature controlled environment) notified to the Customer at or before the time of Delivery; and/or any other information reasonably required by Medtronic.
- 2.8 The issue of an RGA Number does not guarantee that returned Goods will be accepted by Medtronic or that a credit or refund will be provided. Medtronic reserves the right to reject any returned Goods where it determines that the return is not permitted under section 1.1 and to return those Goods to the Customer at the Customer's expense.
- 2.9 Where Medtronic receives and accepts Goods returned by a Customer in accordance with this Policy, Medtronic may

(in its absolute discretion):

- (a) provide the Customer with a credit or refund for the Goods, or (in the case of damaged Goods) repaired or replacement Goods; and
- (b) deduct from any amount to be credited or refunded any restocking fee payable by the Customer under section 3.5 and any freight or other transportation costs incurred by Medtronic in delivering the Goods to the Customer and/or collecting the Goods from the Customer (except where this Policy provides for those costs to be borne by Medtronic).

To avoid doubt, no credit or refund will be provided or paid where the returned Goods are Consignment Stock, and this clause does not limit the remedies available to Medtronic where Goods are returned due to a Warranty Claim.

2.10 Medtronic will not accept any liability for any loss or damage to Consignment Stock:

- (a) not transported by Medtronic's appointed carrier;
- (b) transported without the agreement of a Medtronic representative; or
- (c) transported in inappropriate packaging.

Any such loss or damage will be invoiced to the Customer at the purchase price of the lost or damaged Goods, as determined under the Medtronic Standard Terms (plus any GST).

3. Conditions and fee for the return of Goods

3.1 Except for any Goods damaged on or prior to Delivery (or otherwise faulty or defective), Goods are suitable for return only if (in Medtronic's reasonable opinion) they are:

- (a) standard, non-customised Goods;
- (b) returned within 3 months of Delivery;
- (c) in Saleable Condition (as defined in the Medtronic Standard Terms);
- (d) if delivered with other Goods as a shipping unit, returned in the original, unbroken shipping unit; and
- (e) if delivered as part of a bundle of several Goods charged at a single price, returned in the whole, original bundle of Goods.

3.2 Despite section 3.1, Medtronic may accept the return of any sterile Spine Product with less than 12 months remaining before its expiry if it is considered still sterile (in Medtronic's sole opinion) and any Spine Product which has been delivered unsterile to the Customer may be accepted for return even if not in its original packaging.

3.3 The following Goods will not be accepted for return unless faulty or defective or damaged on or prior to Delivery (or otherwise determined by Medtronic in its discretion in any particular case):

- (a) discontinued Goods;
- (b) temperature sensitive Goods (being items that require storage below 25°C);
- (c) kits;
- (d) needles; and
- (e) Goods that are not suitable for return in accordance with section 3.1 (except for Products accepted under section 3.2).

This section 3.3 does not apply to Consignment Stock.

3.4 Medtronic will issue an invoice to the Customer for any Goods in Consignment Stock that are returned to

Medtronic not in a Saleable Condition (except where Medtronic accepts the return of a Spine Product under section 3.2 above). The purchase price for those Goods will be determined in accordance with the Medtronic Standard Terms.

3.5 Where Medtronic accepts the return of any Goods, the Customer must pay to Medtronic a restocking fee of \$65.00 (plus GST) or 15% of the value of the Goods being returned, whichever is the greater. However, this fee is not payable where the Goods are in Consignment Stock or are returned because they were damaged on or prior to Delivery, incorrectly delivered due to an error by Medtronic, or faulty or defective.

4. Procedure for making a Warranty Claim

4.1 To make a Warranty Claim in respect of faulty or defective Goods, the Customer must contact:

- for Diabetes Products, Customer Service on 1800 777 808 within Australia or +61 2 9857 9000 worldwide or rs.anzsyddiabetes@medtronic.com;
- for Spine Products, the Medtronic Spine representative for the Customer (who can be contacted via the Customer Service number below);
- for other Goods (except capital equipment), the Customer's Medtronic Sales Representative or Customer Service on 1800 668 670 or medcust@medtronic.com; or
- for capital equipment, Technical Services on 1800 336 693 or rs.anzserviceandrepairs@medtronic.com.

4.2 To make a Warranty Claim in respect of any defect in the supply of Services, the Customer must contact Technical Services on 1800 336 693 or rs.anzserviceandrepairs@medtronic.com.

4.3 The Customer should notify Medtronic within 14 days of becoming aware of any Warranty Claim in relation to Goods or Services.

4.4 The Customer will need to provide the following information when making a Warranty Claim in relation to faulty or defective Goods or Services:

- (a) the product code for the Goods (where relevant);
- (b) the serial number for the Goods (where relevant);
- (c) details of the basis of the Warranty Claim; and
- (d) if requested by Medtronic, the address of the premises where the Goods are located, together with the name, telephone and fax numbers, and email address of the Customer's contact person.

4.5 Once notified of a Warranty Claim, Medtronic may (in its absolute discretion):

- (a) require the Customer to deliver or arrange the delivery of the relevant Goods to Medtronic (to the address specified in section 4.7 below), in which case Medtronic will issue an RGA Number to the Customer;
- (b) arrange for the collection (at Medtronic's expense) of the Goods via Medtronic's appointed carrier or a Medtronic Sales Representative, in which case Medtronic will issue an RGA Number to the Customer; and/or
- (c) arrange for a representative of Medtronic to attend the premises at which the Goods are located to inspect the Goods and (at Medtronic's discretion) to

undertake any necessary repairs covered by the warranty or guarantee giving rise to the Warranty Claim.

4.6 The issue of an RGA Number does not guarantee that the Customer's Warranty Claim will be accepted by Medtronic or that the Customer is entitled to have any Goods repaired or replaced or Services re-supplied at Medtronic's expense or to receive a refund or any other remedy.

4.7 Any Goods returned by a Customer to Medtronic under a Warranty Claim must be included in packaging that is clearly addressed as follows:

Medtronic Australasia Pty Limited – Technical Services
RGA [*write RGA number*]
c/- DHL Supply Chain
52A Huntingwood Drive
Huntingwood NSW 2148.

4.8 If requested by Medtronic, Goods returned under a Warranty Claim must be accompanied by: evidence of the original purchase and/or delivery of the Goods; written confirmation by the Customer that the Goods have been stored under any specific, required conditions (eg, a temperature controlled environment) notified to the Customer at or before Delivery; written details of the basis of the Warranty Claim; and/or any other information reasonably required by Medtronic.

4.9 Where Medtronic collects or receives Goods from a Customer under a Warranty Claim, Medtronic will determine what action (if any) will be taken in relation to the Claim following (where required) analysis of the Goods by Medtronic's service and repairs department.

4.10 Medtronic will bear any reasonable expenses incurred by the Customer in the process of making a valid Warranty Claim (such as reasonable postage or freight costs incurred in delivering the relevant Goods to Medtronic, at Medtronic's request under section 4.5(a)), and will reimburse the Customer for any such expenses following receipt from the Customer of satisfactory evidence of those expenses. To make a claim for any such reasonable expenses, the Customer must contact Medtronic via the relevant department specified in section 4.1 or 4.2 (as applicable) and follow the instructions provided by that department.

4.11 Where Goods are repaired or replaced under any Warranty Claim, Medtronic will arrange for the repaired or replacement Goods to be delivered (at Medtronic's expense) to the address provided by the Customer when notifying Medtronic of the Warranty Claim (or any other address agreed in writing between Medtronic and the Customer).

5. General

5.1 If any inconsistency arises between the general provisions of this Policy and any specific, written information provided by Medtronic to the Customer in relation to the requirements for the return, refund, exchange, replacement or repair of any particular Goods, that specific information prevails to the extent of the inconsistency.

5.2 Nothing in this Policy excludes, modifies or restricts any rights a Customer may have under the Australian Consumer Law.

STANDARD TERMS AND CONDITIONS OF SUPPLY FOR NEW ZEALAND

The supply of Products by Medtronic New Zealand Limited (2191768) (**Medtronic**) to the Customer will be subject to these terms and conditions of supply.

1. Definitions

In this document (including the Schedule):

CGA means the *Consumer Guarantees Act 1993*.

Consignment Contract means a contract between Medtronic and the Customer under which Medtronic supplies, and the Customer accepts, Goods on a consignment basis, as formed in accordance with clause 7.1.

Consignment Site, in respect of particular Consignment Stock, means the site where Medtronic makes Delivery of that Consignment Stock pursuant to an Order.

Consignment Stock means Goods supplied by Medtronic to the Customer on a consignment basis (including, without limitation, Goods that are contained, on Delivery, in packaging marked or labelled “consignment stock” (or words to similar effect)).

Contract means a Consignment Contract or a Sale Contract (as the context requires).

Customer means the person or legal entity by or on behalf of whom the relevant Order is made.

Delivery means:

- (a) in the case of Goods, Medtronic making the Goods available for physical collection by or on behalf of the Customer at the place for delivery stipulated in the Order (or otherwise by the Customer) and agreed to by Medtronic or, if no such place is stipulated by the Customer, the usual place for delivery to that Customer shown in Medtronic’s customer records; and
- (b) in the case of Services, Medtronic completing the performance of the required Services.

Diabetes Products means Goods that are for use in or in relation to the monitoring, treatment or management of diabetes.

FTA means the *Fair Trading Act 1986*.

Goods means any medical devices, instruments, machines, equipment, apparatus or other goods supplied or distributed in New Zealand from time to time by or on behalf of Medtronic or any of its related bodies corporate.

GST means goods and services tax imposed under the *Goods and Services Tax Act 1985*.

Insolvency Event has the meaning given in clause 13.8.

Intellectual Property has the meaning given in clause 10.6.

Maximum Quantity, in respect of a particular type of Goods, means the maximum quantity of that type of Goods that Medtronic is prepared to have on consignment at the Consignment Site at any given time.

Medtronic Standard Terms means these standard terms and conditions of supply for New Zealand, as varied by Medtronic from time to time.

Order means an order (whether made in writing or orally) by the Customer:

- (a) to purchase Goods from Medtronic;
- (b) for Goods to be supplied by Medtronic to the Customer on a consignment basis; or
- (c) for Services to be supplied by Medtronic to the Customer, (as applicable).

Products means Goods or Services supplied, or agreed to be

supplied (as the context requires), by Medtronic to the Customer pursuant to an Order.

Returns Policy means Medtronic’s policy for the return of Goods in New Zealand (as amended from time to time), a current copy of which is set out in the Schedule.

Sale Contract means a contract between Medtronic and the Customer for the sale by Medtronic, and the purchase by the Customer, of Products, as formed in accordance with clause 2.7

Saleable Condition, in respect of Goods, means that (in Medtronic’s reasonable opinion):

- (a) the Goods are in their original packaging, unused, unopened and undamaged, and without any label, sticker or marking placed by the Customer on either the Goods or the packaging; and
- (b) if delivered in sterile packaging, the Goods are of uncompromised sterility and integrity (examples of compromised integrity include broken sterilised seals and missing or damaged temperature gauges); and
- (c) if the Goods have an expiry date, the expiry date is not within the next 12 months.

Services means any repair, maintenance or other technical services in relation to any Goods.

Spine Products means Goods that are for use on or in relation to the spine.

2. Quotations and Orders

2.1 Any quotations from Medtronic are valid for a period of 30 days from the date of issue or otherwise as specified in the quotation.

2.2 Prices given by Medtronic in any quotation are applicable to that quotation only.

2.3 All Orders must be placed in the manner and form, and contain the information, required by Medtronic from time to time.

2.4 By making an Order, the Customer acknowledges that it is aware of the contents of, and agrees to be bound by, these Medtronic Standard Terms.

2.5 Medtronic may accept or reject an Order (in whole or part) in its discretion.

2.6 Medtronic’s acknowledgement or confirmation of receipt of an Order does not constitute acceptance of the Order unless Medtronic expressly states otherwise in writing.

2.7 A Sale Contract in relation to all or some of the Products the subject of an Order to purchase Products (the **Relevant Products**) will be formed by and upon the first to occur of:

- (a) Medtronic giving notice in writing to the Customer of acceptance of the Customer’s Order in relation to the Relevant Products; or
- (b) Delivery of the Relevant Products.

In the case of Goods in Consignment Stock, a Sale Contract will be taken to be formed by and upon the Customer withdrawing the Goods for use or purchase, or upon the Goods ceasing to be in Saleable Condition or being lost or stolen, whichever occurs first.

2.8 Each Contract will be governed by these Medtronic Standard Terms and they apply to the exclusion of any other terms and conditions that the Customer attempts or purports to stipulate or incorporate in connection with

an Order (including any terms and conditions specified or referred to in or with the Order or in any other document provided by the Customer).

- 2.9 Neither Medtronic's acknowledgement of an Order nor its failure to object to any conflicting, different or additional terms and conditions proposed by the Customer will constitute, or be taken to constitute, an acceptance of those terms and conditions or a waiver of these Medtronic Standard Terms.
- 2.10 Medtronic may vary these Medtronic Standard Terms at any time. The revised Medtronic Standard Terms will apply to all Orders made after the varied Terms are published on Medtronic's website at www.medtronic.co.nz. The Customer is responsible for ensuring that it has read and understood the latest version of these Medtronic Standard Terms.

3. Prices and GST

- 3.1 The purchase price for each Product ordered by a Customer will be:
 - (a) the price for that Product quoted in writing by Medtronic to the Customer (or otherwise agreed in writing between the parties) in connection with the Order; or
 - (b) if no such quote was given or price agreed, the price set out in Medtronic's prevailing price list for the supply of the relevant Products in New Zealand, as in effect at the time the Product is supplied to the Customer.
- 3.2 All prices on any Medtronic price lists are subject to change without notice.
- 3.3 Medtronic will be entitled to charge the Customer a surcharge of \$30.00 (plus GST) for any Order equal to or less than \$300.00 (plus GST).
- 3.4 If GST is levied or imposed on or in respect of any supply made by a party (the **Supplier**) under or in connection with a Contract, then the recipient of that supply (the **Recipient**) must, in addition to the purchase price or other consideration payable for that supply under these Medtronic Standard Terms (**GST Exclusive Consideration**), pay the Supplier an amount on account of GST calculated by multiplying the GST Exclusive Consideration by the GST rate prevailing at the time that the supply is made.
- 3.5 The Recipient is only required to pay an amount for GST in respect of a taxable supply to it once the Recipient has received a tax invoice from the Supplier.
- 3.6 If a payment to a party under or in connection with a Contract is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will first be reduced by the amount of any input tax deduction to which that party is entitled for an acquisition to which that loss, cost or expense relates and then, if consideration for a taxable supply, will be increased on account of GST in accordance with clause 3.4.
- 3.7 In clauses 3.4 to 3.6, words or expressions that are defined in the Goods and Services Tax Act 1985 have the same meaning as in that Act.

4. Payment

- 4.1 The Customer must pay Medtronic the purchase price for

the Products and any other amounts (including any GST) payable in relation to a Contract, in full, within 30 days of the date of the invoice issued by Medtronic in respect of those Products.

- 4.2 If Medtronic, in its sole discretion, requires advance cash payment or satisfactory security, then the Customer must provide the required payment or security to Medtronic prior to any future supply of Products by Medtronic.
- 4.3 In the event that any amount not paid is referred to a debt collector or legal counsel for collection, the Customer must reimburse Medtronic, on a full indemnity basis, for all legal costs and expenses incurred in pursuing payment of the overdue amount.
- 4.4 The Customer may not set off any money owing or alleged to be owed by Medtronic against money due by the Customer to Medtronic.
- 4.5 The Customer must, on demand by Medtronic, pay interest calculated at the rate of 2% per annum above the "90 day bank bill yield" as published on the Reserve Bank of New Zealand website (www.rbnz.govt.nz/statistics/b2) on or as near as possible to the due date (or, if that rate ceases to be published, the rate nominated by Medtronic), on any amounts due and unpaid in relation to a Contract, calculated on daily balances from the due date for payment until the actual date of payment and capitalised monthly.

5. Delivery

- 5.1 Subject to clause 5.2, and unless agreed otherwise, Delivery of Goods the subject of an Order will be made on the basis of Free Into Store (FIS) or Delivered Duty Paid (DDP) as defined in INCOTERMS 2010.
- 5.2 If the Customer requests express freight of Goods or any non-standard form of delivery, Medtronic may, in its discretion, require the Customer to bear all freight and delivery costs incurred by Medtronic in satisfying the Customer's requirements. Where applicable, any such costs will be invoiced to and payable by the Customer at the same time as the purchase price for the relevant Goods.
- 5.3 Any dates for Delivery given by Medtronic to the Customer are estimates only and Medtronic will not be liable for failure to deliver, or for any delay in Delivery, of any Products, however arising.
- 5.4 Medtronic reserves the right to make partial deliveries of Goods the subject of an Order or deliveries by instalments and to issue interim invoices to the Customer. In those circumstances, a separate Contract will be formed in respect of each separate Delivery of Goods.
- 5.5 The Customer agrees to accept Delivery of any Goods the subject of an Order at any time between 9.00am and 5.00pm on a business day.
- 5.6 If the Customer refuses or is unable to accept Delivery of any Goods in accordance with clause 5.5, the Customer will, in addition to being liable to pay for the Goods, be liable to pay Medtronic for all costs of freight, storage, insurance, interest and extra costs of handling that may be incurred by Medtronic as a result of such refusal or inability to accept Delivery.

- 5.7 Any unloading or loading of Goods at the Delivery place will be the Customer's responsibility, unless otherwise agreed in writing by Medtronic.
- 5.8 An acknowledgement or receipt for Products signed on behalf of the Customer will be conclusive evidence of Delivery.

6. Risk and title

- 6.1 Risk in all Goods passes to the Customer at the time of Delivery.
- 6.2 Full legal and equitable ownership of, and title to, Goods (other than Consignment Stock) passes to the Customer at the time of Delivery or the time at which the Customer makes full payment to Medtronic (in cleared funds) of all amounts payable for the Goods under the relevant Sale Contract, whichever occurs later. Medtronic retains full ownership of and title to all Goods until that time.
- 6.3 Medtronic will retain full legal and equitable ownership of, and title to, all Goods that are Consignment Stock until:
 - (a) the Customer withdraws those Goods from the Consignment Stock for use or purchase pursuant to a Consignment Contract; or
 - (b) if the Goods cease to be in a Saleable Condition or are lost or stolen, the time at which the Customer makes full payment to Medtronic (in cleared funds) of the purchase price for those Goods and any other amounts payable in respect of the Goods under these Medtronic Standard Terms (whichever occurs first).

7. Consignment terms and conditions

- 7.1 A Consignment Contract in relation to all or some of the Goods the subject of an Order for consignment of Goods (the **Relevant Goods**) will be formed by and upon the first to occur of:
 - (a) Medtronic giving notice in writing to the Customer of acceptance of the Customer's Order in relation to the Relevant Goods; or
 - (b) Delivery of the Relevant Goods.
- 7.2 Within 10 days of any Goods in Consignment Stock being used by the Customer, the Customer must issue to Medtronic an Order to purchase the used Goods. The Customer's Order must include a description of the Goods, the Consignment Site and any other information requested by Medtronic. Medtronic will promptly issue to the Customer an invoice for such Goods at the applicable purchase price, as determined under clause 3.1 (plus any GST).
- 7.3 The Customer must take out and maintain adequate insurance cover for the loss, damage or destruction of any Consignment Stock, following Delivery to the Customer, in accordance with its policies and usual practices, and Medtronic's interest in such Consignment Stock must be recorded on the policy if possible. If requested, the Customer must promptly provide a certificate of currency for each policy to Medtronic.
- 7.4 The Customer must, in respect of all Consignment Stock held by the Customer:
 - (a) segregate the Consignment Stock from all other goods of the Customer or any third party and conspicuously identify the Consignment Stock as

Medtronic's property;

- (b) maintain suitable premises for the storage of all Consignment Stock and store all Consignment Stock in a safe and secure manner to avoid any loss, theft, damage or unauthorised access (including by following any instructions provided by Medtronic or the manufacturer in relation to storage and ensuring that Consignment Stock is stored within the prescribed temperature range and in an area free from pests) and the Customer accepts full responsibility for any loss or damage arising from a failure to comply with this clause;
 - (c) use reasonable endeavours to use first the Goods in the Consignment Stock that have the nearest expiry date (if relevant) - that is, to use Goods on a "first-expiring, first-out" basis;
 - (d) keep records of its use of Consignment Stock, including date of use and serial and product codes;
 - (e) segregate any potentially contaminated Goods from the Consignment Stock to avoid cross-contamination and to prevent distribution to other users and/or customers; and
 - (f) advise Medtronic immediately if any part of the Consignment Stock is moved.
- 7.5 The Customer may not move or transfer Goods in the Consignment Stock to another site without Medtronic's prior written consent.
 - 7.6 Where Medtronic gives the Customer notice in writing of a Maximum Quantity in respect of any type of Goods in the Consignment Stock, Medtronic will replenish the Consignment Stock at the Consignment Site to, and only to, the Maximum Quantity for the relevant type of Goods specified in that notice (as varied from time to time).
 - 7.7 Notwithstanding clause 7.6, if any Goods in the Consignment Stock are in short supply, Medtronic may allocate the available supply of those Goods in the manner that Medtronic considers in its absolute discretion the most equitable.
 - 7.8 Medtronic retains the right to decrease the Maximum Quantity for any type of Goods in the Consignment Stock to a level in keeping with the number of that type of Goods purchased by the Customer per annum.
 - 7.9 The Customer agrees to grant Medtronic access to the Consignment Site during business hours to carry out quarterly stocktakes of the Consignment Stock, and at other times on reasonable notice. Any Goods not in a Saleable Condition will not be counted as part of the Consignment Stock for the purposes of the stocktake.
 - 7.10 The Customer must issue a purchase order in order for Medtronic to replenish any shortfall in the Consignment Stock, including for any Goods that are not in a Saleable Condition.
 - 7.11 Medtronic will be entitled to invoice the Customer for Goods in Consignment Stock that are not in a Saleable Condition within 30 days of its discovery of such Goods.
 - 7.12 Medtronic will endeavour to notify the Customer of any recent or impending obsolescence of Goods in the Consignment Stock. The Customer agrees either to return such Goods (subject to compliance with the Returns Policy) or to issue to Medtronic a purchase order for such Goods within 14 days of being notified of obsolescence.

8. Cancellation

- 8.1 The Customer may not under any circumstances cancel an Order without Medtronic's consent and except upon terms which will indemnify Medtronic against any and all loss, costs and charges resulting from the cancellation.
- 8.2 If Medtronic consents to the Customer's cancellation of an Order for Goods and the Goods have already been collected or dispatched from Medtronic's warehouse (whether or not received by the Customer), the Customer must pay to Medtronic a restocking fee of \$65.00 (plus GST) or 15% of the value of those Goods, whichever is the greater.
- 8.3 No alterations to specifications in an Order, including quantity, type, Delivery or design details, may be made without the written consent of Medtronic and subsequent adjustment or confirmation of prices by Medtronic.
- 8.4 Medtronic reserves the right to change or modify the design of any of its Goods without any obligation to furnish or install such changes or modifications on Goods previously or subsequently supplied.

9. Returns Policy

- 9.1 If the Customer claims that any Goods do not conform to the description set out in the Order or have been short-delivered or were damaged on or prior to Delivery, then the Customer will give written notice to Medtronic within 7 days after Delivery and preserve the Goods intact and make them available for inspection by Medtronic's representatives at the Customer's or Medtronic's premises, as Medtronic may elect.
- 9.2 The procedure and conditions for the return of Goods are set out in the Returns Policy. Medtronic will not accept Goods for return, exchange or credit unless the requirements of the Returns Policy are strictly satisfied (or otherwise required by law).
- 9.3 Where Medtronic accepts the return of any Goods from the Customer, the Customer must pay to Medtronic a restocking fee of \$65.00 (plus GST) or 15% of the value of the Goods being returned, whichever is the greater. However, this fee is not payable where the Goods are in Consignment Stock or are returned because they were damaged on or prior to Delivery, incorrectly delivered due to an error by Medtronic, or faulty or defective.
- 9.4 Where Delivery is made on the basis of Ex-Works (as defined in INCOTERMS 2010) from Medtronic's premises, any claims for shortage or damage in transit must be made by the Customer against the carrier. To the extent of any inconsistency between this clause and the Returns Policy, this clause prevails.

10. Intellectual Property and confidential information

- 10.1 The Customer acknowledges that all right, title and interest in and to Intellectual Property is the sole property of, or licensed by, Medtronic (as the case may be) and the Customer will gain no rights, title or interest in or to the Intellectual Property whatsoever.
- 10.2 The Customer specifically acknowledges Medtronic's exclusive rights to ownership of any modification, translation or adaptation of Products or Medtronic's documentation relating to Products and any other improvement or development based thereon, whether

developed, supplied, installed or paid for by or on behalf of the Customer or any customer of the Customer or otherwise.

- 10.3 The Customer may only use the Intellectual Property for any purposes reasonably necessary for, or reasonably incidental to, the use of Products for their intended purpose and must not allow any third party to use the Intellectual Property unless prior written consent has been obtained from Medtronic.
- 10.4 The Customer must not, and must not permit any person reasonably within its control nor procure any person to, modify, copy, clone or reverse engineer any Products, or copy, modify or decompile any of Medtronic's documentation relating to Products.
- 10.5 If the Customer receives any information from Medtronic in connection with Products that is, by its nature, confidential or that the Customer is or ought reasonably to be aware is confidential, the Customer must keep that information confidential and not disclose the whole or any part of the information to a third party unless: it receives the prior written consent of Medtronic; such information enters the public domain (other than as a result of a breach of any obligation of confidence owed by the Customer); such disclosure is reasonably necessary for any purposes described in clause 10.3; or such disclosure is required by law or the rules of any applicable stock exchange.
- 10.6 In this clause 10, **Intellectual Property** means any and all present and future intellectual property rights conferred or recognised by statute, common law or equity in or relating to any Products, including such rights in or in respect of patents, inventions, improvements, designs, drawings, instruction booklets, specifications, circuit layouts, computer software, programs and databases, technical data, formulae, componentry, confidential information, trade secrets, trademarks, business names, trade names, domain names, logos, knowhow and copyright, and any application or right to apply for registration of, and any licence or right to use, any such rights.

11. Warranties

- 11.1 To the maximum extent permitted by law, Medtronic makes no warranties, representations or guarantees to the Customer except to the extent expressly set out in these Medtronic Standard Terms or otherwise expressly stated by Medtronic in writing.
- 11.2 Unless otherwise expressly stated by Medtronic in relation to any Goods (and subject to clauses 11.3, 11.4 and 12.3), Medtronic warrants that all Goods supplied under a Sale Contract will be free from any material defect in workmanship and materials (**Standard Goods Warranty**) for a period ending:
 - (a) where no expiry date is expressly provided by Medtronic or the manufacturer for the Goods, 12 months from the date of the invoice in respect of the Goods; or
 - (b) where an expiry date is expressly provided by Medtronic or the manufacturer for the Goods, on that expiry date,(**Warranty Period**).
- 11.3 Where, at the time of supply, any Goods include or are accompanied by an express, written warranty provided

by the manufacturer or Medtronic, the Standard Goods Warranty does not apply.

11.4 The Standard Goods Warranty does not cover any damage to, fault in, or failure or malfunction of, any Goods where and to the extent that it results from any of the following:

- (a) causes beyond the reasonable control of Medtronic, including but not limited to accident, abuse, misuse, mechanical or electrical overload, abrasion, corrosion, erosion or chemical attack or any force majeure event as described in clause 14;
- (b) incorrect assembly, installation, use, storage or application of the Goods by the Customer or a third party;
- (c) modification or repair of the Goods without Medtronic's prior written consent;
- (d) failure to comply with all written and oral instructions of Medtronic or the manufacturer regarding the assembly, installation, use, storage, application and/or processing of the Goods;
- (e) failure to perform required preventative maintenance; or
- (f) normal wear and tear.

11.5 If any defect in any Goods becomes apparent and is notified to Medtronic during the Warranty Period and is covered by the Standard Goods Warranty, Medtronic will (in its absolute discretion) repair or replace the Goods or take any other action contemplated by clause 12.1.

11.6 Unless otherwise expressly stated by Medtronic in relation to any Goods, any replacement or repaired Goods will be covered by the unexpired portion of the Warranty Period in respect of the original Goods or for a period of 90 days from the date of replacement or repair, whichever period is longer.

11.7 Medtronic warrants that all Services supplied under a Sale Contract will be rendered with due care and skill (**Standard Services Warranty**). If any breach of this warranty becomes apparent and is notified to Medtronic within 90 days after Delivery of the relevant Services, Medtronic will (in its absolute discretion) rectify or re-supply the Services (or any part of them) or pay the cost of having the Services (or any part of them) supplied again.

11.8 Where the Products are supplied to the Customer for the purposes of a business, then, to the maximum extent permitted by law, the Customer agrees that:

- (a) the provisions of the CGA do not apply to the Products; and
- (b) sections 9, 12A, 13 and 14(1) of the FTA do not apply to the obligations of the parties under these Medtronic Standard Terms.

11.9 The Standard Goods Warranty and Standard Services Warranty (**Standard Warranties**) are given by Medtronic New Zealand Limited of Level 3, Building 5, 666 Great South Road, Penrose, Auckland 1051 (email: nzsales@medtronic.com and phone: 0800 377 807).

11.10 To claim any entitlement under a Standard Warranty (as well as any reasonable expenses incurred in making the claim), the Customer must follow the procedure for making warranty claims set out in section 4 of the Returns Policy.

11.11 Subject to clause 11.8, nothing in these Medtronic Standard Terms will affect or limit any right or remedy

that the Customer may have under the CGA and/or the FTA (or under any other applicable law in relation to Products).

12. Limitation of liability

12.1 To the maximum extent permitted by law, Medtronic's liability for a breach of any warranty, guarantee or condition given by or binding on Medtronic in relation to any Goods (including the Standard Goods Warranty) is limited to (as Medtronic may elect in its absolute discretion):

- (a) the replacement of the Goods;
- (b) the supply of equivalent Goods;
- (c) the repair of the Goods;
- (d) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
- (e) the payment of the cost of having the Goods repaired.

12.2 To the maximum extent permitted by law, Medtronic's liability for a breach of any warranty, guarantee or condition given by or binding on Medtronic in relation to any Services (including the Standard Services Warranty) is limited to (as Medtronic may elect in its absolute discretion):

- (a) the supplying of the Services again; or
- (b) the payment of the cost of having the Services supplied again.

12.3 To the maximum extent permitted by law and notwithstanding any provision to the contrary in these Medtronic Standard Terms, Medtronic's total liability (whether that liability arises in contract, tort (including negligence) or equity, or under statute or otherwise) for any and all liabilities, losses, damages, costs or expenses (including legal costs and expenses, whether incurred or awarded) (together **Losses**) arising out of or in connection with the supply, sale or use of any Products or any breach by Medtronic of a Contract (including, but not limited to, any breach by Medtronic of the Standard Goods Warranty or the Standard Services Warranty) will be limited to the aggregate purchase price paid by the Customer to Medtronic for Products supplied under that Contract and in no event will Medtronic be liable for any Consequential Loss. "**Consequential Loss**" means: (a) any loss (whether direct or indirect, anticipated or otherwise) of profits, revenue, goodwill, savings, use of Products, data, contracts, business opportunities or reputation; (b) any special, consequential, indirect, exemplary or punitive Losses; and (c) any Losses suffered by the Customer that cannot reasonably be considered to arise naturally from the event, events or breach giving rise to the Losses (and, in each case, whether arising in contract, tort (including negligence) or equity, or under statute or otherwise).

12.4 To the maximum extent permitted by law, for any Goods or equipment forming part of any Goods that are not manufactured by Medtronic or any of its related bodies corporate, Medtronic's liability (if any) for such Goods or equipment will not exceed the liability of the manufacturer.

12.5 Subject to clause 11.8, nothing in this clause 12 (or in any other provision of these Medtronic Standard Terms) excludes, modifies or restricts any rights or remedies a Customer may have under the CGA and/or the FTA.

13. Default and termination

13.1 If:

- (a) the Customer defaults in any payment due to Medtronic under, or breaches any other term of, a Sale Contract or these Medtronic Standard Terms; or
- (b) an Insolvency Event occurs in respect of the Customer,

then Medtronic may, without prejudice to any other rights Medtronic has under any Contract, terminate the Sale Contract and/or any other contracts between Medtronic and the Customer by giving notice in writing to the Customer.

13.2 If the Customer fails to make any payment when due under a Contract or any Insolvency Event occurs in respect of the Customer, Medtronic or its representative may (without notice and without prejudice to any of its other rights and remedies) recover, repossess and/or resell (and otherwise enforce its security interest in) any or all of the Goods in which title has not passed to the Customer under clause 6 above, and may (for that purpose, and by its representatives) enter the Customer's premises or any other place those Goods are stored by the Customer and remove the Goods (including by detaching them from any other goods to which they may be attached or from any land to which they may be fixed), without being liable for any loss or damage caused. Nothing in this clause limits Medtronic's rights or the Customer's obligations arising apart from under this clause 13.2.

13.3 Medtronic or the Customer may immediately terminate a Consignment Contract by giving notice in writing to the other party in any of the following circumstances:

- (a) the other party commits a material breach of that Contract or these Medtronic Standard Terms and has not remedied that breach within 30 days after receiving written notice from the party requiring it to do so; or
- (b) any Insolvency Event occurs in respect of the other party.

13.4 Either Medtronic or the Customer may terminate a Consignment Contract upon 60 days' prior written notice to the other party.

13.5 Upon termination of a Consignment Contract, the Customer agrees to:

- (a) issue a purchase Order for the Goods in the Consignment Stock that the Customer wishes to purchase; and
- (b) return to the Supplier the Goods in the Consignment Stock that the Customer does not wish to purchase provided however that the Goods must be in Saleable Condition.

13.6 Medtronic will issue an invoice to the Customer for any shortfall in the Consignment Stock and/or Products that are not in a Saleable Condition, at the applicable purchase price, as determined under clause 3.1 (plus any GST).

13.7 Upon termination of a Contract, all obligations and liabilities of Medtronic and the Customer will cease but any accrued rights and entitlements remain.

13.8 In this clause 13, an **Insolvency Event**, in respect of Medtronic or the Customer (the **relevant party**), means that:

- (a) the relevant party is or becomes insolvent, fails or is unable or admits its inability to pay its debts as they become due, or is presumed to be insolvent under an applicable law (including, where applicable, section 287 of the *Companies Act 1993*);
- (b) the relevant party has bankruptcy, insolvency or winding up proceedings initiated or instituted by or against it;
- (c) a secured creditor or mortgagee enters into possession or disposes of the whole or any part of the relevant party's assets or business;
- (d) the relevant party makes any assignment for the benefit of, or proposes, enters into or makes any arrangement, compromise or composition with, its creditors;
- (e) the relevant party has a liquidator, interim liquidator, receiver, receiver and manager, statutory manager, trustee in bankruptcy, an administrator or any other similar official appointed (whether under Part 15A of the *Companies Act 1993* or otherwise) to it or in respect of all or any part of its property, assets or undertaking;
- (f) any step is taken to appoint, or with a view to appointing, a statutory manager (including the making of any recommendation in that regard by the Financial Markets Authority) under the *Corporations (Investigation and Management) Act 1989* in respect of the relevant party, or it or an associated person (as that term is defined in that Act) of it is declared at risk pursuant to the provisions of that Act;
- (g) the relevant party is otherwise wound up or dissolved; or
- (h) the relevant party ceases to carry on business or any licence or authorisation it requires to carry on business is suspended or revoked.

14. Force majeure

Medtronic's obligations under any Contract will be suspended and Medtronic will not be liable for any failure to fulfil or any delay in fulfilling any obligation arising from a Contract where, to the extent and for so long as, Medtronic is prevented from or delayed in carrying out that obligation, in whole or in part, because of any event of force majeure including, but not limited to, an accident, breakage or failure of machinery or apparatus, shortage of manufacturing capacity, withdrawal of business licence by the Government, war, riot, civil disorder, rebellion or revolution, act of terrorism, sabotage or other labor stoppage, epidemic, natural disaster such as flood, typhoon or earthquake, fire affecting Medtronic's operations or the operations of a supplier of Medtronic, inability to obtain fuel, power, raw materials, container or transportation facilities, any other act of God or any act or omission of a third party (other than an act or omission of an officer, employee, contractor or agent of Medtronic) that is outside the reasonable control of Medtronic.

15. Personal Property Securities Act 1999 (PPSA)

15.1 The Customer acknowledges that, until such time as title in Goods has passed to the Customer in accordance with clause 6 above, the interest of Medtronic in Goods supplied under a Contract and in all proceeds from the

sale of those Goods by the Customer to a third party is a security interest.

15.2 The Customer consents to Medtronic registering its security interest on the Personal Property Securities Register and agrees to provide all assistance (such as obtaining consents, signing and producing documents and entering into a further agreement in relation to the security interest) reasonably required by Medtronic for the purposes of:

- (a) facilitating such registration;
- (b) ensuring that Medtronic's security interest is enforceable against the Customer and third parties, perfected and otherwise effective, and has the priority required by Medtronic; and/or
- (c) enabling Medtronic to exercise rights in connection with the security interest.

15.3 Until such time as title in Goods has passed to the Customer in accordance with clause 6 above, the Customer acknowledges and agrees that:

- (a) those Goods will be held by the Customer as bailee and trustee for Medtronic;
- (b) the Customer must separately store those Goods in such a way as to show clearly that they are the property of Medtronic and maintain the Goods in satisfactory condition;
- (c) the Customer must not in any way assign, charge, encumber, lease or otherwise deal with those Goods in such a manner as to create a security interest over the Products in favour of the Customer or any third party; and
- (d) the Customer must maintain adequate insurance cover for the loss, damage or destruction of the Goods in accordance with its policies and usual practices.

The parties agree that this clause will not prohibit the Customer from using or selling Goods in the ordinary course of business on the condition that the Customer must hold so much of the proceeds of any such sale as does not exceed the total outstanding amount owing by the Customer to Medtronic under a Contract relating to the Goods on trust for Medtronic in a separate account, and account to Medtronic for those proceeds on demand.

15.4 The Customer waives its rights to receive any notice under the PPSA (including any notice of verification statement) unless the notice is required by that Act and cannot be excluded.

15.5 Medtronic and the Customer agree that each Contract and all related information and document(s) are confidential and will not be disclosed to unauthorised representatives or third parties, except to the extent disclosure is permitted by these Medtronic Standard Terms or required by law.

15.6 To the extent permitted by law, Medtronic and the Customer agree that the following provisions of the PPSA will not apply in relation to the enforcement of Medtronic's security interest in any Goods (or the proceeds of sale of any Goods) supplied to the Customer under a Contract: sections 108, 109, 111(1), 112, 114(1)(a), 116, 120(1), 120(2), 121, 122, 125, 126, 127, 129, 131, 133 and 134 of the PPSA.

15.7 Expressions defined in the PPSA have the same meaning when used in this clause 16 of the Medtronic Standard Terms.

16. Product recalls

In the event that any Goods supplied to the Customer are subject to a recall, field safety alert or hazard alert (whether initiated by Medtronic or any governmental agency or regulatory authority, and whether mandatory or voluntary), the Customer agrees to provide all assistance reasonably requested by Medtronic (including providing Medtronic with details of the identity and contact details of any person to whom the Goods have been supplied by the Customer) and to comply with all reasonable directions of Medtronic, in connection with the recall or alert.

17. Compliance with law

In carrying on the Customer's business, the Customer must comply with its obligations under the law including without limitation, the Customer must itself, and must procure any person reasonably within its control to:

- (a) not pay, offer or promise to pay, or authorise the payment of, any monies or anything of value, directly or indirectly, to any government official or employee, any official or employee of a state-run or state-owned or controlled enterprise or entity, any official or employee of a public international organisation, any candidate for political or public office, any official or employee of any political party, or any family member or relative of such persons or any political party for the purpose of influencing any act or decision of any such official, employee, candidate, political party, enterprise or entity, public organisation or government to obtain or retain business, or direct business to any person or entity, or for any other improper advantage or purpose; and
- (b) comply with all applicable export and import laws and regulations, including associated embargo and sanction regulations and, unless authorised by applicable governmental licence or regulation, not directly or indirectly export or re-export any technical information or software subject to these Medtronic Standard Terms (including direct products of such technical information or software) to any prohibited destination or country (including release to nationals, wherever they may be located, of any prohibited country) as specified in such applicable export regulations, and

in the event the Customer breaches its obligations under this clause, Medtronic may immediately terminate any Contract and/or other contracts and the Customer must indemnify and hold harmless Medtronic against any and all claims, losses, damages, penalties or fines related to such breach. This clause 0 will survive the termination or expiration of a Contract.

18. Choice of law and jurisdiction

18.1 Each Contract and these Medtronic Standard Terms will be governed by and construed in accordance with the laws of New Zealand.

18.2 The Customer unconditionally submits to the non-exclusive jurisdiction of the courts of New Zealand.

18.3 A Sale Contract is not governed by the United Nations Convention on Contracts for the International Sale of Goods.

19. General

- 19.1 In this document (including the Schedule):
- (a) the singular includes the plural and vice versa;
 - (b) another grammatical form of a defined word or expression has a corresponding meaning;
 - (c) a reference to a clause is to a clause of these Medtronic Standard Terms;
 - (d) a reference to a document includes a document in electronic form;
 - (e) a reference to \$ is to New Zealand dollars;
 - (f) a reference to any supply or other act by or of Medtronic includes a supply made, or other act done, on Medtronic's behalf by a person or entity acting as Medtronic's duly authorised representative or agent;
 - (g) the terms "including", "includes", "for example", "in particular" and similar expressions are illustrative only and do not limit the meaning of the words preceding them; and
 - (h) a reference to writing includes any mode of representing or reproducing words, figures, drawings or symbols in a visible form.
- 19.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from these Standard Terms, but the rest of the Standard Terms are not affected.
- 19.3 The waiver by Medtronic of any provision or breach by the Customer of any provision of a Contract will not be construed as a waiver of any other provision or breach of any other provision, or of any subsequent breach of the same or any other provision of the Contract.
- 19.4 Medtronic's failure to exercise or delay in exercising a right, power or remedy does not constitute a waiver of the right, power or remedy. Any waiver must be agreed in writing by Medtronic.
- 19.5 Any notice to be given to a party under a Contract must be in writing and must be sent by post, facsimile or email to the address, facsimile number (if any) or email address of that party specified or referred to below or such other address, facsimile number or email address as the party may from time to time notify the other party in accordance with this clause:
- (a) in the case of Medtronic:

Address: Level 3, Building 5
666 Great South Road
Penrose, Auckland 1051

Email to: nzsales@medtronic.com; and
 - (b) in the case of the Customer, the address, facsimile number or email address specified in the Order or, if not so specified, noted in Medtronic's customer records as the contact address, facsimile number or email address for the Customer.
- 19.6 Where there is more than one Customer under a Contract, then the liability of each will be joint and several.
- 19.7 A Contract and any right or obligation of the Customer under it cannot be assigned or transferred by the Customer without the prior written consent of Medtronic.
- 19.8 Medtronic may sub-contract the performance of all or part of its obligations under a Contract.

- 19.9 A Contract may be varied only by agreement in writing of each party.
- 19.10 Notwithstanding anything to the contrary in these Medtronic Standard Terms, in the event that Medtronic is supplying Products pursuant to a current, written and signed agreement between Medtronic and the Customer, where there is any inconsistency between these Medtronic Standard Terms and that written agreement, the terms and conditions of that agreement will prevail to the extent of the inconsistency.
- 19.11 Notwithstanding anything to the contrary in these Medtronic Standard Terms, in the event that Medtronic is supplying Diabetes Products to the Customer pursuant to an Order made through the Medtronic MiniMed eShop, the terms and conditions of the MiniMed eShop will apply to the exclusion of these Medtronic Standard Terms.

SCHEDULE - POLICY FOR THE RETURN OF GOODS IN NEW ZEALAND

This Policy is to be read in conjunction with the Medtronic Standard Terms and Conditions of Supply for New Zealand (**Medtronic Standard Terms**). Terms defined in the Medtronic Standard Terms have the same meaning in this Policy, unless the context requires otherwise.

1. Circumstances in which Goods may be returned

- 1.1 Subject to the terms of this Policy, Medtronic may accept the return of Goods sold or consigned by Medtronic to a Customer where it is satisfied that the Goods:
- were damaged on or prior to Delivery;
 - were incorrectly delivered (by type or quantity) due to an error by Medtronic;
 - are suitable for return in accordance with section 3.1 (and not excluded under section 3.3) below; or
 - have a fault or defect for which the Customer is entitled to make a claim under any applicable warranty given by, or statutory guarantee binding on, Medtronic (**Warranty Claim**).
- 1.2 The table below is a guide to the sections of this Policy that are applicable and relevant in the various circumstances covered by the Policy.

| Circumstances | Reference |
|---|--|
| Goods damaged on or prior to Delivery. Goods incorrectly delivered due to an error by Medtronic. | See section 2 for the procedure for arranging the return of these Goods. |
| Goods that the Customer wishes to return due to an incorrect order or "change of mind". | See sections 2 and 3 of this Policy for the procedure, conditions and fee for arranging the return of these Goods. |
| Faulty or defective Goods (including capital equipment and consumables) or defective Services. | See section 4 below for the procedure for making a Warranty Claim. |

- 1.3 No Goods will be accepted by Medtronic for return, exchange or credit unless the procedure and conditions set out in this policy are strictly satisfied (or otherwise required by law). Unauthorised returns will not be accepted and will be returned to the Customer at its expense.

2. Procedure for the return of Goods

- 2.1 To arrange for the return of Goods (other than faulty or defective Goods), the Customer must request an authorisation number (called an 'RGA Number') by contacting:
- for [Diabetes Products](#), InterMed on 0800 333 444 or +64 9 415 4800 or orders@intermed.co.nz; or
 - for [all other Goods](#), the Customer's

Medtronic Sales Representative or Customer Service on 0800 377 807 or +64 9 967 4660 or nzsales@medtronic.com.

- 2.2 An RGA Number should be requested:
- in the case of Goods damaged on or prior to Delivery or incorrectly delivered (whether due to an error by Medtronic or the Customer), within 7 days of Delivery; or
 - otherwise, within 3 months of Delivery.
- 2.3 The Customer will need to provide the following information when requesting an RGA Number:
- purchase order number or dispatch note number for the Goods to be returned;
 - product code for those Goods;
 - number or quantity of those Goods;
 - detailed reasons for the return of the Goods; and
 - if Medtronic will be responsible for collecting the Goods, the address of the premises from where the Goods are to be collected together with the name, telephone and fax numbers, and email address of the Customer's contact person.
- 2.4 Where an RGA Number is issued for the return of any Goods damaged on or prior to Delivery or incorrectly delivered due to an error by Medtronic, or for the return of any Goods in Consignment Stock, Medtronic will arrange for the collection of the Goods via Medtronic's appointed carrier (at Medtronic's expense). The Medtronic Spine representative may make alternative return arrangements with the Customer for the return of Spine Products.
- 2.5 In all other cases, the Customer must (at the Customer's expense) deliver or arrange the delivery of the relevant Goods to the delivery address advised by Medtronic when the Customer requests an RGA Number.
- 2.6 When returning any Goods to Medtronic (whether via its appointed carrier or otherwise), the Customer must include the Goods in packaging that is clearly addressed to the delivery address advised by Medtronic when the Customer contacts the relevant contact point specified in section 2.1. The Customer must also follow any other instructions given by Medtronic.
- 2.7 If requested by Medtronic, returned Goods must be accompanied by: evidence of the original purchase and/or delivery of the Goods; written confirmation by the Customer that the Goods have been stored under any specific, required conditions (eg, a temperature controlled environment) notified to the Customer at or before the time of Delivery; and/or any other information reasonably required by Medtronic.
- 2.8 The issue of an RGA Number does not guarantee that returned Goods will be accepted by Medtronic or that a credit or refund will be provided. Medtronic reserves the right to reject any returned Goods where it determines that the return is not permitted under section 1.1 and to return those Goods to the Customer at the Customer's expense.
- 2.9 Where Medtronic receives and accepts Goods returned by a Customer in accordance with this Policy, Medtronic may (in its absolute discretion):
- provide the Customer with a credit or refund for the

Goods, or (in the case of damaged Goods) repaired or replacement Goods; and

- (a) deduct from any amount to be credited or refunded any restocking fee payable by the Customer under section 3.5 and any freight or other transportation costs incurred by Medtronic in delivering the Goods to the Customer and/or collecting the Goods from the Customer (except where this Policy provides for those costs to be borne by Medtronic).

To avoid doubt, no credit or refund will be provided or paid where the returned Goods are Consignment Stock, and this clause does not limit the remedies available to Medtronic where Goods are returned due to a Warranty Claim.

2.10 Medtronic will not accept any liability for any loss or damage to Consignment Stock:

- (a) not transported by Medtronic's appointed carrier;
- (b) transported without the agreement of a Medtronic representative; or
- (c) transported in inappropriate packaging.

Any such loss or damage will be invoiced to the Customer at the purchase price of the lost or damaged Goods, as determined under the Medtronic Standard Terms (plus any GST).

3. Conditions and fee for the return of Goods

3.1 Except for any Goods damaged on or prior to Delivery (or otherwise faulty or defective), Goods are suitable for return only if (in Medtronic's reasonable opinion) they are:

- (a) standard, non-customised Goods;
- (b) returned within 3 months of Delivery;
- (c) in Saleable Condition (as defined in the Medtronic Standard Terms);
- (d) if delivered with other Goods as a shipping unit, returned in the original, unbroken shipping unit; and
- (e) if delivered as part of a bundle of several Goods charged at a single price, returned in the whole, original bundle of Goods.

3.2 Despite section 3.1, Medtronic may accept the return of any sterile Spine Product with less than 12 months remaining before its expiry if it is considered still sterile (in Medtronic's sole opinion) and any Spine Product which has been delivered unsterile to the Customer may be accepted for return even if not in its original packaging.

3.3 The following Goods will not be accepted for return unless faulty or defective or damaged on or prior to Delivery (or otherwise determined by Medtronic in its discretion in any particular case):

- (a) discontinued Goods;
- (b) temperature sensitive Goods (being items that require storage below 25°C);
- (c) kits;
- (d) needles; and
- (e) Goods that are not suitable for return in accordance with section 3.1 (except for Products accepted under section 3.2).

This section 3.3 does not apply to Consignment Stock.

3.4 Medtronic will issue an invoice to the Customer for any Goods in Consignment Stock that are returned to Medtronic not in a Saleable Condition (except where Medtronic accepts the return of a Spine Product under

section 3.2 above). The purchase price for those Goods will be determined in accordance with the Medtronic Standard Terms.

3.5 Where Medtronic accepts the return of any Goods, the Customer must pay to Medtronic a restocking fee of \$65.00 (plus GST) or 15% of the value of the Goods being returned, whichever is the greater. However, this fee is not payable where the Goods are in Consignment Stock or are returned because they were damaged on or prior to Delivery, incorrectly delivered due to an error by Medtronic, or faulty or defective.

4. Procedure for making a Warranty Claim

4.1 To make a Warranty Claim in respect of faulty or defective Goods, the Customer must contact:

- for Diabetes Products, Customer Service on 0800 633 487 within New Zealand or +61 2 9857 9000 worldwide or nzsales@medtronic.com;
- for other Goods (except capital equipment), the Customer's Medtronic Sales Representative or Customer Service on 0800 377 807 or +64 9 967 4660 or nzsales@medtronic.com; or
- for capital equipment, Technical Services on +64 211 905 677 or rs.nztechnicalservices@medtronic.com.

4.2 To make a Warranty Claim in respect of any defect in the supply of Services, the Customer must contact Technical Services on +64 211 905 677 or rs.nztechnicalservices@medtronic.com.

4.3 The Customer should notify Medtronic within 14 days of becoming aware of any Warranty Claim in relation to Goods or Services.

4.4 The Customer will need to provide the following information when making a Warranty Claim in relation to faulty or defective Goods or Services:

- (a) the product code for the Goods (where relevant);
- (b) the serial number for the Goods (where relevant);
- (c) details of the basis of the Warranty Claim; and
- (d) if requested by Medtronic, the address of the premises where the Goods are located, together with the name, telephone and fax numbers, and email address of the Customer's contact person.

4.5 Once notified of a Warranty Claim, Medtronic may (in its absolute discretion):

- (a) require the Customer to deliver or arrange the delivery of the relevant Goods to Medtronic, in which case Medtronic will issue an RGA Number to the Customer and advise the Customer of the delivery address;
- (b) arrange for the collection (at Medtronic's expense) of the Goods via Medtronic's appointed carrier or a Medtronic Sales Representative, in which case Medtronic will issue an RGA Number to the Customer; and/or
- (c) arrange for a representative of Medtronic to attend the premises at which the Goods are located to inspect the Goods and (at Medtronic's discretion) to undertake any necessary repairs covered by the warranty or guarantee giving rise to the Warranty Claim.

- 4.6 The issue of an RGA Number does not guarantee that the Customer's Warranty Claim will be accepted by Medtronic or that the Customer is entitled to have any Goods repaired or replaced or Services re-supplied at Medtronic's expense or to receive a refund or any other remedy.
- 4.7 When returning any Goods to Medtronic under a Warranty Claim, the Customer must include the Goods in packaging that is clearly addressed to the delivery address advised by Medtronic when the Customer contacts the relevant contact point specified in section 4.1. The Customer must also follow any other instructions given by Medtronic.
- 4.8 If requested by Medtronic, Goods returned under a Warranty Claim must be accompanied by: evidence of the original purchase and/or delivery of the Goods; written confirmation by the Customer that the Goods have been stored under any specific, required conditions (eg, a temperature controlled environment) notified to the Customer at or before Delivery; written details of the basis of the Warranty Claim; and/or any other information reasonably required by Medtronic.
- 4.9 Where Medtronic collects or receives Goods from a Customer under a Warranty Claim, Medtronic will determine what action (if any) will be taken in relation to the Claim following (where required) analysis of the Goods by Medtronic's service and repairs department.
- 4.10 Medtronic will bear any reasonable expenses incurred by the Customer in the process of making a valid Warranty Claim (such as reasonable postage or freight costs incurred in delivering the relevant Goods to Medtronic, at Medtronic's request under section 4.5(a)), and will reimburse the Customer for any such expenses following receipt from the Customer of satisfactory evidence of those expenses. To make a claim for any such reasonable expenses, the Customer must contact Medtronic via the relevant department specified in section 4.1 or 4.2 (as applicable) and follow the instructions provided by that department.
- 4.11 Where Goods are repaired or replaced under any Warranty Claim, Medtronic will arrange for the repaired or replacement Goods to be delivered (at Medtronic's expense) to the address provided by the Customer when notifying Medtronic of the Warranty Claim (or any other address agreed in writing between Medtronic and the Customer).

5. General

- 5.1 If any inconsistency arises between the general provisions of this Policy and any specific, written information provided by Medtronic to the Customer in relation to the requirements for the return, refund, exchange, replacement or repair of any particular Goods, that specific information prevails to the extent of the inconsistency.
- 5.2 Nothing in this Policy excludes, modifies or restricts any rights a Customer may have under the CGA or FTA (where applicable).