

1. **Definitions and Interpretation**

1.1. In this document:

Agreement means the agreement referred to in clause 3.2 between Trajan Nutrition and the Purchaser;

ARTG means Australian Register of Therapeutic Goods;

Excluded Purposes means any use of the Products in or in connection with:

- (a) preventing, diagnosing, curing or alleviating a disease, ailment, defect or injury in persons; or
- (b) influencing, inhibiting or modifying a physiological process in persons; or
- (c) testing the susceptibility of persons to a disease or ailment; or
- (d) influencing, controlling or preventing conception in persons; or
- (e) testing for pregnancy in persons; or
- (f) the replacement or modification of parts of the anatomy in persons;

GST means the goods and services tax imposed by *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;

Instructions For Use means the instructions for use of the Products provided by Trajan Nutrition to Purchaser, as amended from time to time by written notice to Purchaser;

Intellectual Property means any registered or unregistered intellectual property rights including patents, trade marks and service marks, designs, copyrights, database rights, design rights, confidential information, know-how, trade secrets, applications for any of the above, and any similar right recognised in any jurisdiction, together with all rights of action in relation to the infringement of any of the above;

Laboratory has the meaning given to that term in clause 7.9;

Medical Device has the meaning given under the Therapeutic Goods Act;

Order means an order in writing placed by Purchaser for the supply of Products or Services in accordance with any tender, quotation or offer made by Trajan Nutrition;

Personal Information means information about an identified individual, or an individual who is reasonably identifiable;

Price means the price payable by Purchaser for the Products or Services as set out in an invoice issued by Trajan Nutrition;

Products means the products sold or supplied by Trajan Nutrition;

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Purchaser means the person or entity who placed the Order for the supply of the Products or Services, and any successor in title to the Products or the Results or other information provided in connection with the Services;

Results means the results of analytical testing performed on Samples in connection with the provision of the Services by Trajan Nutrition;

Sample means a biological sample including blood, plasma or breast milk;

Sensitive Information means Personal Information which includes genetic information, biometric information, health information and any other information collected from analysis of a Sample;

Services means the services sold or supplied by Trajan Nutrition;

Terms and Conditions means these terms and conditions for the sale or supply of the Products and Services to Purchaser;

TGA means the Therapeutic Goods Administration;

Therapeutic Goods Act means the *Therapeutic Goods Act 1989* (Cth);

Trajan Nutrition means Trajan Nutrition Pty Ltd, ACN 622 658 940 together with its officers, employees and agents; and

User means a person whose Sample is collected using the Products, or whose Sample is provided to Trajan Nutrition in connection with the provision of the Services.

- 1.1 The following rules of interpretation apply unless the context requires otherwise:
- (a) headings are for convenience only and do not affect interpretation;
 - (b) the singular includes the plural and conversely;
 - (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
 - (d) a reference to a clause is to a clause of these Terms and Conditions;
 - (e) a reference to conduct includes, without limitation, any omission, statement or undertaking, whether or not in writing;
 - (f) a reference to any statute, law or regulation shall be construed as a reference to that statute, law or regulation as amended at the relevant time.

2. Application of these Terms and Conditions

Each Order placed by the Purchaser shall be conclusively deemed to have been made subject to these Terms and Conditions, as published on the Trajan Nutrition website and in force at the time the Order was placed. The Terms and Conditions shall apply to the Order irrespective of any contrary terms printed on or accompanying the Order or any prior or subsequent discussions between Trajan Nutrition and the Purchaser.

3. Confirmation of Orders and Binding Agreement

- 3.1 An Order placed by a Purchaser will not be binding on Trajan Nutrition unless and until Trajan Nutrition accepts the Order. Trajan Nutrition may accept an Order by taking any steps to confirm or satisfy the Order.
- 3.2 Upon acceptance of an Order, Purchaser and Trajan Nutrition enter into a binding agreement for the supply of the Products or Services on these Terms and Conditions (the "**Agreement**").
- 3.3 Any Order which has been accepted by Trajan Nutrition may not be cancelled by the Purchaser except with the agreement in writing of Trajan Nutrition.

4. Supply of the Products or Services

- 4.1 In consideration of the payment of the Price, Trajan Nutrition agrees to supply, and the Purchaser agrees to buy, the Products or Services on these Terms and Conditions.
- 4.2 Upon delivery of the Products or Services to Purchaser, Trajan Nutrition will provide Purchaser with an invoice for the Price (including GST or other applicable taxes), together with applicable delivery costs. The Purchaser is responsible for all local taxes and for any customs or import duties payable for Products sold outside Australia.
- 4.3 Purchaser will pay the invoice issued by Trajan Nutrition within 30 days of the invoice date.
- 4.4 Where the Price is not paid in full by the due date, Trajan Nutrition has the right to charge interest on the balance outstanding, calculated from the due date until the date of payment at a rate 5% higher than the rate of interest charged by Trajan Nutrition's bankers on Trajan Nutrition's overdraft from time to time. Such interest shall accrue from day to day on the amount of the Price remaining unpaid up to the date of payment and shall be payable on demand.
- 4.5 Trajan Nutrition has the right to cancel the remainder of the Agreement or to suspend deliveries of the Products if the Purchaser does not strictly observe the terms of payment.

5. Delivery Times

- 5.1 Subject to clause 5.2, Trajan Nutrition will use reasonable endeavors to achieve any delivery times stated by Trajan Nutrition.
- 5.2 Times stated by Trajan Nutrition for delivery are estimates only, unless otherwise specified in writing. Trajan Nutrition does not guarantee that the delivery of the Products or Services will be within the delivery times stated by Trajan Nutrition, and no liability shall attach to Trajan Nutrition in the event of delivery being delayed by any circumstances, including circumstances beyond Trajan Nutrition's control. In no circumstances shall delay amount to, or be deemed to be, a breach of the

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Agreement and the Purchaser shall not be entitled to treat the Agreement as repudiated by reason of any delay in delivery.

6. Risk and Title

- 6.1 Risk in Products shall pass to the Purchaser upon delivery.
- 6.2 Title to the Products shall remain with Trajan Nutrition until the Purchaser has made payment in full to Trajan Nutrition of the Price.
- 6.3 The Purchaser acknowledges that until payment of the Price is made in full, the Purchaser holds the Products in a fiduciary capacity on behalf of Trajan Nutrition.

7. Use of the Products and Services

- 7.1 Purchaser acknowledges that the Products:
- (a) are not listed on the ARTG or any equivalent register of therapeutic goods in any jurisdiction outside Australia; and
 - (b) have not been approved for use as a Medical Device by the TGA or any equivalent regulatory body in any jurisdiction outside Australia.
- 7.2 Purchaser acknowledges that Trajan Nutrition is not supplying the Products or Services for any Excluded Purpose, and Purchaser warrants that it will not use the Products or Services for any Excluded Purpose.
- 7.3 Purchaser will use the Products strictly in accordance with the Instructions for Use.
- 7.4 Purchaser will not modify or attempt to reverse engineer, deconstruct or in any way determine the structure or operation of the Products.
- 7.5 Purchaser is responsible for Purchaser's safe handling, storage, use and disposal of the Products, to ensure that the Products will not cause any loss or harm to a User or to any other person.
- 7.6 The Products and Services are being supplied for use by the Purchaser or in any research activities performed by or in collaboration with the Purchaser.
- 7.7 Trajan Nutrition makes no representation that the Products conform to country, state or local laws, ordinances, regulations, codes or standards. Purchaser will comply with all country, state or local laws, ordinances, regulations, codes or standards applicable to the importation, handling and use of the Products (including complying with legal requirements relating to the handling and use of Personal Information obtained or generated by Purchaser using the Products).
- 7.8 Where the Purchaser has placed an Order for Services which require the Purchaser to provide Trajan Nutrition with a Sample, the Purchaser warrants to Trajan Nutrition that:

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- (a) the User who provided the Sample has given the Purchaser their binding legal consent (or, in the case of a User who is under 18 years of age or who otherwise does not have legal capacity, the binding legal consent of the User's legal guardian) to the supply of the Sample to Trajan Nutrition to enable Trajan Nutrition to perform the Services described in the Order; and
 - (b) the User (or the User's legal guardian as applicable) has read, understood and agrees that Trajan Nutrition will perform the Services in accordance with these Terms and Conditions and Trajan Nutrition will handle the User's Personal Information (including their Sensitive Information) in accordance with the Privacy Policy published on the Trajan Nutrition website.

- 7.9 Purchaser acknowledges and agrees that in connection with the supply of the Services, Trajan Nutrition may engage an external third party laboratory to produce the Results on behalf of Trajan Nutrition (the **Laboratory**). Trajan Nutrition reserves the right to change the Laboratory from time to time without notice to the Purchaser.

- 7.10 Trajan Nutrition does not provide any warranties to the Purchaser or to any User regarding:
 - (a) the Laboratory, including the accreditation or performance of Services by the Laboratory;
 - (b) the Results, including the content or accuracy of any Results; or
 - (c) any outcome, information or other results obtained by the Purchaser from the use of the Products or any collection or analysis of Samples using the Products.

- 7.11 Trajan Nutrition shall have no liability for any loss or damage caused by errors or omissions in any information provided to the Purchaser or any User in connection with the Services.

- 7.12 The Purchaser acknowledges and agrees that any information provided in connection with the Products or Services (including the Results) is intended to provide general information and nutritional guidance only. The Results do not constitute medical advice and must not be used for any Excluded Purpose. The Purchaser assumes full responsibility for all Results obtained from use of the Products or Services and for any interpretation of such Results.

- 7.13 The Purchaser must keep Trajan Nutrition informed of any complaints concerning the Products and Services and must comply with any directions of Trajan Nutrition in any issues, proceedings or negotiations relating to such complaints. Trajan Nutrition may at its discretion recall any Products already sold to the Purchaser (whether for a refund, credit or replacement of the Products) and the Purchaser must comply with any notice issued by Trajan Nutrition for such recall.

- 7.14 Trajan Nutrition will securely dispose of all Samples using appropriate biohazard procedures and processes any time after 30 days following delivery of the Report to the Purchaser.

8. Confidentiality and Privacy

- 8.1 Trajan Nutrition will maintain the confidentiality in all Personal Information provided by the Purchaser in accordance with Trajan Nutrition's Privacy Policy as published on the website www.trajannutrition.com from time to time.

9. Intellectual Property

- 9.1 The Purchaser acknowledges Trajan Nutrition's licence to use or ownership of the patents, trade marks, copyright and any other intellectual property rights (both registered and unregistered) contained within the Products or the Results or other information supplied in connection with the Services. The Purchaser is granted a non-exclusive licence to use the Results for the Purchaser's own purposes or for the purposes of any research activities undertaken by or in collaboration with the Purchaser.
- 9.2 The Purchaser agrees that neither the Purchaser, nor its servants or agents, will attempt to do anything with any of Trajan Nutrition's intellectual property rights which will render the Purchaser liable to Trajan Nutrition for violation or infringement of its intellectual property rights.

10. Liability and indemnities

- 10.1 To the extent permitted by applicable law:
- (a) Purchaser bears the sole risk and assumes all responsibility and liability in connection with the handling and use of the Products and all Results obtained from receipt of the Services, whether by the Purchaser or any User;
 - (b) Trajan Nutrition excludes all warranties, express or implied, including any warranty as to fitness for a particular purpose, any warranty as to sterility or safety of the Products, and any warranty against infringement of Intellectual Property rights;
 - (c) Trajan Nutrition's total liability for any loss or damage of any kind, however caused, due to Trajan Nutrition's negligence, breach of contract, breach of any law, in equity, or otherwise, arising out of all acts, omissions and events in connection with the supply and use of the Products and Services is limited to the following, at the sole discretion of Trajan Nutrition:
 - (i) the replacement of the Products; or
 - (ii) the resupply of the Services; or
 - (iii) payment of the amount equivalent to the Price paid by Purchaser for the Products or Services supplied.
 - (d) Trajan Nutrition excludes all liability, for consequential or incidental damages, third party claims or loss of profits, revenue, goodwill or opportunities in contract, tort, under any statute or otherwise (including negligence); and

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- (e) Purchaser hereby indemnifies Trajan Nutrition against all liability, loss, costs, damages or expenses (including legal costs and expenses) incurred or suffered by any person as a result of:
 - (i) the use by Purchaser or any User of the Products or the Results or other information received from Trajan Nutrition in connection with the Services;
or
 - (ii) any breach by Purchaser of these Terms and Conditions.

11. General

- 11.1 These Terms and Conditions are governed by the laws of the State of Victoria, Australia and the parties irrevocably and unconditionally submit to the exclusive jurisdiction of the Courts of Victoria, Australia.
- 11.2 These Terms and Conditions constitute the entire understanding between the Parties with respect to its subject matter and supersedes all previous written or oral negotiations, commitments and understandings.
- 11.3 If any provision of these Terms and Conditions is void, voidable, unenforceable or illegal in any jurisdiction will not apply in that jurisdiction, but will apply in jurisdictions where it would not be void, voidable, unenforceable or illegal and the rest of these Terms and Conditions will still apply.
- 11.4 Any provisions contained in these Terms and Conditions which are expressed to or are, by their nature, intended to survive expiry or termination of the Agreement entered into under clause 3.2 will survive expiry or termination of that Agreement.
- 11.5 These Terms and Conditions may only be varied or amended by signed, written agreement.
- 11.6 Neither party may assign, transfer, charge, encumber or otherwise deal with any of its rights or obligations under these Terms and Conditions or under any agreement entered into under clause 3.2 or attempt or purport to do so, without the prior written consent of the other party.
- 11.7 A failure to exercise or a delay in exercising any right, power or remedy under these Terms and Conditions, or under the Agreement entered into under clause 3.2, does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that, or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.