



# **TERMS AND CONDITIONS OF SUPPLY**



## 1 General terms and scope of use

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### 1.1 Overview

These Terms govern the supply of Goods through the Platform, which is operated by Akesa for the purpose of procuring Goods on a just-in-time basis for eligible patient treatment. By submitting Orders through the Platform, Customer acknowledges and agrees to be bound by these Terms.

### 1.2 Definitions

For the purpose of these Terms, the definitions set out in Clause 10 apply.

## 2 Purpose and permitted use

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- (a) Customer must:
- (i) not use Goods acquired through the Platform for personal purchases, resale or any unauthorised commercial purpose;
  - (ii) comply with the PBS compliance obligations and Special Access Scheme compliance obligations set out below; and
  - (iii) otherwise comply with, and ensure all Orders placed through the Platform comply with, all Compliance Requirements.
- (b) Customer is solely responsible for holding and maintaining all necessary licences, permits, registrations and accreditations (**authorisations**) required by law to order, receive and store Goods, provide treatment, dispense Goods and provide clinical services to patients and operate as a registered health service provider or pharmacy (as applicable).
- (c) Customer must notify Akesa in writing immediately if any such authorisations are suspended, revoked, expired or subject to conditions or it becomes aware of any investigation or compliance action by a Governmental Authority that may affect its eligibility to use the Platform or any Goods.
- (d) Akesa may immediately suspend or terminate access to the Platform if it believes Customer is in breach of its obligations under this section 2 or is no longer legally authorised to participate in purchasing Goods through the Platform.

### 2.2 PBS compliance obligations

In respect of Non-PBS Products supplied through the Platform, Customer must not:

- (a) submit, or enable submission of, any claim for PBS reimbursement in relation to such Non-PBS Products;
- (b) use the Platform to circumvent PBS pricing restrictions, volume controls, or indication-based subsidy limitations; and
- (c) misrepresent the intended use or regulatory status of any Goods for the purpose of reimbursement.

Akesa reserves the right to audit compliance with these obligations and may report any suspected breaches to relevant government or regulatory authorities.

### 2.3 Special Access Scheme compliance obligations

In respect of Products supplied through the Platform for use in a Special Access Scheme, Customer must ensure all Products are strictly prescribed and used in accordance with the applicable requirements for such Goods as approved under the applicable Special Access Scheme. Akesa reserves the right to audit compliance with these obligations and may report any suspected breaches to relevant government or regulatory authorities.

## 3 Ordering and supply of Goods

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### 3.1 Product eligibility and availability

The Platform enables Customers to order selected Goods made available by participating Manufacturers or their authorised suppliers. Goods availability is subject to:

- (a) Manufacturer or supplier stock levels;
- (b) applicable regulatory approvals and registration status;
- (c) operational capacity, supply chain constraints, or commercial arrangements; and
- (d) Akesa's discretion in making Goods available through the Platform.

Akesa makes no guarantee that any particular Goods will be available at any given time and may update, suspend or remove Goods from the Platform at its discretion without prior notice.

### 3.2 Just-in-time supply model

All Orders are fulfilled under a just-in-time supply model designed to:

- (a) minimise wastage and reduce expiry risk;
- (b) prevent stockpiling or excessive ordering; and
- (c) promote responsible, timely, and need-based access to Goods.

Orders which do not comply with these just-in-time supply model requirements are not permitted unless expressly authorised by Akesa in writing. Akesa reserves the rights to audit Customer's compliance under this clause 3.2.

### 3.3 Ordering process

- (a) All Orders must be submitted via the Platform by a duly authorised representative of Customer, specifying the type and quantity of Goods required (including the active ingredient, dosage and presentation), the requested delivery date and the delivery destination, and are subject to Akesa's validation and acceptance before fulfilment.
- (b) Akesa will not process Orders submitted through other channels (e.g. phone, email, fax) unless explicitly authorised in writing or where Platform functionality is temporarily unavailable.
- (c) Akesa reserves the right to reject any Order for any reason, including but not limited to:
  - (i) Goods unavailability;



- (ii) exceeding Customer's applicable Credit Limit or order cap;
- (iii) regulatory restrictions; or
- (iv) suspected non-compliance or misuse.

### 3.4 Order confirmation and modifications

- (a) An Order is deemed accepted when:
  - (i) Akesa issues a written confirmation to the Customer; or
  - (ii) the order status is updated to "confirmed" or "processing" within the Platform.
- (b) Where Goods in an Order are partially unavailable:
  - (i) Akesa may modify the Order to reflect available quantities; or
  - (ii) Customer will be notified via the Platform and must approve or decline the modification within five (5) Business Days,  
  
and if no response is received within this timeframe, the Order will be deemed cancelled.
- (c) No further modifications may be made once the Order is confirmed and processed, except at Akesa's discretion.

### 3.5 Delivery and receipt

- (a) Goods will be delivered in accordance with Akesa's logistics arrangements and may be subject to lead times, temperature controls, or transport restrictions. The Customer acknowledges that:
  - (i) delivery timeframes are indicative only and not guaranteed;
  - (ii) Customer is responsible for providing accurate delivery details and ensuring authorised personnel are available to receive deliveries; and
  - (iii) Akesa is not liable for delays or non-delivery caused by supply chain disruptions, regulatory issues, or incorrect delivery details.
- (b) The Customer (or its nominee) shall inspect all deliveries of Goods from Akesa on delivery and if Customer finds the Goods Defective (in accordance with clause 4.1(b) below), Customer shall send a Defect Notice to Akesa within 24 hours or one (1) Business Day of delivery.
- (c) In the event of a hidden defect, which cannot be detected from visible observation, Customer shall send a Defect Notice to Akesa within ten (10) Business Days of recognition of this hidden defect, otherwise, it will be considered that Customer has accepted the Goods.

### 3.6 Risk

Risk in Goods passes to Customer upon delivery to the nominated address, regardless of whether the Goods are received by an authorised representative. Akesa is not liable for:

- (a) any damage, loss, or theft of Goods occurring after delivery;

- (b) delays caused by third-party logistics providers or supply chain disruptions; or
- (c) delivery failure due to incorrect or incomplete delivery instructions provided by Customer.

### 3.7 Title

- (a) Title in Goods will not pass to Customer until full payment has been received by Akesa in cleared funds. Until such payment is received, Customer shall hold the relevant Goods for and on behalf of Akesa subject to these terms.
- (b) Until payment is made to Akesa, Customer shall not grant any security interest over, lease, assign or otherwise deal with such Goods, except with the written consent of Akesa, provided that Customer may dispense the Goods in the ordinary course of the Customer's business before title has passed, provided that Customer shall hold any proceeds relating to dispensed Goods on trust for Akesa.

### 3.8 Consolidated orders

Where multiple Orders are submitted for delivery to the same address, Akesa may consolidate shipments for operational efficiency, in which case:

- (a) consolidation will not affect the delivery charges or invoicing of individual Orders;
- (b) partial deliveries may occur depending on stock availability or delivery scheduling; and
- (c) each consolidated delivery will be subject to the same requirements around risk and inspection on delivery.

## 4 Returns and cancellations

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### 4.1 Returns

- (a) Goods may not be returned unless Akesa has specifically stated in writing that it will accept the Goods or the Goods are Defective.
- (b) Goods are "Defective" if the Goods (or relevant pack of Goods) do not comply with the Specifications for the manufacture of, and otherwise pertaining to, the relevant Goods. To avoid doubt, returns will not be accepted for change of mind, over-ordering, or where Goods have been opened, used or tampered with.
- (c) A Defect Notice must set out all Defects in the Goods.
- (d) If a Defect Notice is accepted by Akesa, Akesa will provide the following remedy:
  - (i) replacement Goods to the same specification and value; or
  - (ii) refund of the value of the Goods.
- (e) The Customer shall not be required to pay for any Defective Goods.
- (f) Where the Customer has paid any monies for Defective Goods, Akesa must replace such Goods with Goods that are not Defective, as soon as reasonably practicable, or refund all amounts paid for Defective Goods within ten (10) Business Days of Akesa's agreement that the Goods are Defective and also pay for the cost of the return or destruction of the Defective Goods.



- (g) Where Akesa has accepted the return of Goods which are not Defective, all such Goods are to be properly and securely packed and clearly labelled with the order number and returned via Akesa's nominated method. All costs associated with the return of Goods under this clause 4.1(g) are to be paid by the Customer unless otherwise agreed in writing by Akesa.

#### 4.2 Cancellations and variations

- (a) Cancellations and variations to any Order may only be made before acceptance of such Order pursuant to clause 3.4(a). Once an Order has been accepted, it cannot be cancelled, amended, or reversed, without consent in writing from Akesa.
- (b) Upon receipt of written request of cancellation from Customer, Akesa will use its best efforts to cease, return or reduce supply of the Goods. Akesa will take all steps to mitigate any loss to Customer.
- (c) If Akesa incurs a loss or damage from Customer's cancellation of the Order, Akesa will submit a claim for compensation to this value to Customer in accordance with these Terms. Customer will pay Akesa thirty (30) days from the submission of the claim under this clause 4.2.

#### 4.3 Recalls and regulatory directives

If Akesa, a Manufacturer, or a relevant authority issues a recall or regulatory directive in relation to Goods supplied to the Customer:

- (a) the Customer must immediately cease use and quarantine affected Goods and comply with all recall instructions, including return, reporting or destruction requirements and otherwise cooperate fully with Akesa, the Manufacturer and any Governmental Authorities in managing the recall or investigation; and
- (b) to the maximum extent permitted by law, Akesa is not liable for any loss, cost, or disruption resulting from the recall, unless directly caused by its negligence or breach of these Terms.

### 5 Supply price and payment terms

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#### 5.1 Supply price

- (a) The price charged for the Goods shall be the price for supply of such Goods displayed on the Platform at the time the Order is submitted.
- (b) Akesa may update or revise the price of any Goods displayed on the Platform at any time without prior notice, provided that pricing changes will not affect Orders already accepted by Akesa.
- (c) The Customer is responsible for reviewing current pricing before submitting an Order.

#### 5.2 Payment terms and methods

- (a) Unless otherwise agreed in writing, Akesa will issue monthly batch invoices to the Customer for all Orders dispatched during that month.
- (b) Payment is due within 30 calendar days of the invoice date.
- (c) All payments must be made by electronic funds transfer (EFT) to the account nominated by Akesa.

- (d) All charges, including Delivery Fees and applicable taxes, are the Customer's responsibility.
- (e) Unless otherwise agreed in writing by the parties, any invoice from Akesa to the Customer shall be invoiced in Australian dollars.

#### 5.3 GST and taxation

- (a) All fees and charges under these Terms are exclusive of GST unless expressly stated otherwise.
- (b) If GST is payable in relation to any supply made under or in connection with these Terms, the Customer must pay to Akesa an additional amount equal to the GST payable, at the same time as the payment for the underlying supply is due.
- (c) Akesa will issue valid tax invoices in accordance with the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

#### 5.4 Credit limits

Akesa may assign, vary, or withdraw a Credit Limit for the Customer at its sole discretion, having regard to payment history, order volume, risk profile, and other relevant factors. If Customer exceeds its Credit Limit:

- (a) Akesa may suspend further Orders until the outstanding balance is reduced;
- (b) immediate payment may be required to bring the account within limit; and/or
- (c) Akesa may refuse to fulfil new Orders pending a credit review.

### 6 Customer default and payment non-compliance

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#### 6.1 Events of default

Each of the following constitutes an "Event of Default" by the Customer:

- (a) failure to pay any amount due to Akesa by the applicable due date;
- (b) breach of any material obligation under these Terms that is not remedied within five (5) Business Days of written notice;
- (c) the Customer is or becomes insolvent, enters administration, liquidation or any form of external control;
- (d) use of the Platform in breach of applicable laws, PBS obligations or these Terms;
- (e) provision of materially false or misleading information in connection with Orders, payment or compliance.

#### 6.2 Consequences of default

Upon the occurrence of an Event of Default, Akesa may, without prejudice to any other rights, elect to do one or more of the following:

- (a) suspend Platform access and block new Orders from the Customer;
- (b) terminate any existing Orders not yet fulfilled;
- (c) revoke or adjust the Customer's Credit Limit and require upfront payment for future Orders;



- (d) recover all outstanding amounts, including any accrued interest, legal fees, enforcement costs, and applicable delivery or storage charges; or
- (e) engage third-party recovery agents or take legal action to recover debts owed.

Akesa may reinstate Platform access or supply arrangements at its sole discretion, subject to full payment of outstanding amounts and reassessment of commercial risk.

### 6.3 Interest on overdue payments

- (a) If any payment is not made by the due date, Akesa may charge interest on the overdue amount from the due date until the date of actual payment.
- (b) Interest will accrue daily and be compounded monthly.
- (c) The applicable interest rate will be the higher of The 11:00am official cash rate published by the Reserve Bank of Australia plus 2% per annum and any rate permitted or prescribed by applicable law.
- (d) Akesa's right to charge interest is in addition to, and not in limitation of, its right to recover any debt collection or legal costs incurred.

## 7 Limitation of liability and disclaimers

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### 7.1 Statutory requirements

If any statute implies terms into these Terms which cannot be lawfully excluded, such terms will apply to these Terms, save that the liability of Akesa, as it applies to the supply of Goods, for breach of any such implied term will be limited, at the option of Akesa in the case of a minor problem with the Goods and at the option of Customer in the case of a major problem, to any one or more of the following:

- (a) the replacement of Goods to which the breach relates or the supply of equivalent Goods;
- (b) the repair of such Goods; or
- (c) the payment of the cost of replacing the Goods or of acquiring equivalent Goods.

### 7.2 Supply disclaimer

- (a) Akesa makes no guarantee regarding:
  - (i) the continuous availability of any specific Goods;
  - (ii) fulfilment of Orders within any particular timeframe; or
  - (iii) suitability of Goods for any clinical, therapeutic, or commercial purpose beyond the specifications and approvals provided by the Manufacturer.
- (b) To the extent permitted by law, Akesa disclaims all warranties, representations, and liabilities in relation to availability, accuracy of listings, delivery or performance of Goods, except as expressly set out in these Terms.
- (c) Without limiting any rights that may apply under the Australian Consumer Law, Akesa is not liable for:
  - (i) indirect, incidental or consequential loss;
  - (ii) loss of profits, business interruption or reputational harm; or

- (iii) any damage or loss suffered by the Customer due to third-party logistics delays or Manufacturer shortages.

### 7.3 Responsibility for use

The Customer is solely responsible for:

- (a) ensuring that all Goods are stored, handled, and used in accordance with Manufacturer instructions, applicable laws and regulatory requirements;
- (b) ensuring Goods are administered, dispensed or supplied by qualified Healthcare Professionals; and
- (c) compliance with all internal protocols, recordkeeping obligations and licensing conditions.

Akesa is not liable for any adverse outcome, regulatory breach or patient harm resulting from the Customer's handling or use of Goods supplied through the Platform.

## 8 Dispute resolution process

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Before commencing legal proceedings (except for urgent injunctive relief), the parties must attempt to resolve any dispute in good faith as follows:

- (a) **Notification:** A party claiming a dispute must give written notice to the other party setting out the nature and details of the dispute.
- (b) **Internal escalation:** Within ten (10) Business Days of notice, each party must nominate a senior representative with authority to resolve the dispute and ensure they engage in direct discussions.
- (c) **Mediation:** If the dispute remains unresolved within fifteen (15) Business Days of escalation, either party may refer the matter to mediation in Melbourne, Victoria, administered by the Resolution Institute or similar agreed body. The costs of mediation will be shared equally.
- (d) **Legal proceedings:** If the dispute is not resolved within thirty (30) Business Days of initial notice, either party may initiate court proceedings.

Nothing in this clause prevents Akesa from taking immediate legal or enforcement action for unpaid invoices, breach of confidentiality, intellectual property misuse, or regulatory violations.

## 9 General

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- (a) These Terms are governed by the laws of the State of Victoria, Australia.
- (b) The parties submit to the exclusive jurisdiction of the courts of Victoria and the Commonwealth of Australia. Each party irrevocably waives any objection to the jurisdiction or venue of those courts on any basis, including inconvenience.
- (c) Failure or delay by Akesa in exercising any right or enforcing any provision of these Terms does not constitute a waiver of that right.
- (d) Akesa may assign any of its rights and obligations to any person. Customer may not assign any of its rights and obligations to any person without the prior written consent of Akesa.
- (e) These Terms constitute the entire agreement between



the parties for the supply of the Goods pursuant to any Order accepted by Akesa and exclude any terms or documents submitted by the Customer and, to the maximum extent permitted by law, any terms implied by trade, custom, practice or course of dealing.

- (f) Any variation to these Terms as they apply to any Order accepted by Akesa must be in writing and approved by an authorised representative of both parties.
- (g) To avoid doubt, Akesa may amend these Terms from time to time as they apply to any new Orders submitted by Customer by uploading such updated Terms to the Platform. By submitting Orders through the Platform, Customer acknowledges and agrees to be bound by the then current Terms available through the Platform.

## 10 Definitions

**Akesa** means Akesa Pty Ltd (ABN 57 168 121 122), the operator of the Platform.

**Business Day** means a day other than a Saturday, Sunday or national public holiday in Australia.

**Commercial Marketing Approval** means the marketing authorisation, certificate, approval or licence to market and sell a medicinal product granted by the competent Governmental Authority in the respective region or country.

**Compliance Requirements** means all applicable laws, regulations, guidelines, and mandatory codes and other requirements of competent Governmental Authorities (including PBS guidelines and TGA requirements) governing the procurement, supply, storage, and use of pharmaceutical products.

**Credit Limit** means the maximum value of outstanding invoices permitted by Akesa in respect of the Customer at any time, as determined or amended by Akesa in its sole discretion.

**Customer** means any registered hospital, pharmacy, medical practice, or other healthcare provider in Australia that is authorised by Akesa to access and use the Platform.

**Defect Notice** means a written notice issued by the Customer in accordance with section 3.5(b) alleging that Goods are Defective.

**Defective** has the meaning given in clause 4.1(b).

**Delivery Fee** means the fee charged by Akesa or its logistics providers for delivery of Goods, as notified on the Platform or otherwise agreed in writing.

**Goods** means any pharmaceutical product made available for order and supply via the Platform.

**Governmental Authority** means any supra-national, national, state or local governmental authority, regulatory agency or other governmental body having authority over the territories where the Goods are to be delivered or supplied.

**GST** means Goods and Services Tax as defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**Healthcare Professional** means a licensed health practitioner legally authorised to prescribe, dispense or administer pharmaceutical products in accordance with applicable laws.

**Manufacturer** means a pharmaceutical company that makes pharmaceutical products available for supply via the Platform, either directly or via an authorised distributor or wholesaler.

**Non-PBS Product** means a pharmaceutical product with a TGA registered indication that is not eligible for reimbursement under the PBS in the context of its intended supply and use.

**Order** means a request submitted by the Customer via the Platform for the purchase and supply of Goods.

**PBS** means the Pharmaceutical Benefits Scheme administered by the Australian Government, which subsidises eligible medicines for Australian residents under applicable criteria.

**Platform** means the Aksys software-as-a-service (SaaS) platform made available by Akesa for procurement of Goods, and includes all related interfaces, systems, content, tools, and services.

**Pricing Structure** means the non-reimbursable pricing applicable to all Goods supplied via the Platform, excluding any entitlement to PBS subsidy or rebate.

**Special Access Scheme** means a clinical access program, pursuant to which Healthcare Professionals can provide patients access to medicinal products which are not the subject of a Commercial Marketing Approval.

**Specifications** means the specifications of the Goods as approved in the applicable Commercial Marketing Approval(s) and described in the approved product and patient labelling or, in respect of any Goods which are being supplied under a Special Access Scheme, the applicable specifications of the Goods as approved pursuant to the distribution of Goods under the applicable Special Access Scheme.

**Terms** means these Terms and Conditions of Supply, as amended by Akesa from time to time.

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Name

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Position

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Date

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Organisation

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Signature