

1 DEFINITIONS AND INTERPRETATION

- 1.1 The following expressions have the following meanings in these conditions:
- "3-DM" means 3-D Matrix Medical Technology Pty Ltd (ABN 22 630 028 394).
- "Affiliate" has the meaning given to the term "related body corporate" in the *Corporations Act 2001* (Cth).
- "Confidential Information" means all confidential, non-public or proprietary information, regardless of how the information is stored or delivered, exchanged between the parties relating to 3-DM's and its Affiliates' business, intellectual property, technology or other affairs and includes the Contract, the Price List and any pricing arrangements or discounts discussed or agreed by the parties.
- "Contract" has the meaning given to it in clause 3.5.
- "Customer" means the person(s), firm or company who purchases the Products from 3-DM.
- "Order" means an order by the Customer to purchase Products from 3-DM, however made.
- "Price List" means a price list provided to the Customer by 3-DM which contains Product codes, minimum quantities of supply and applicable prices, as amended by 3-DM from time to time.
- "Products" means any products agreed in the Contract to be supplied to the Customer by 3-DM.
- "Product Specification" means the Product and storage specification attached hereto as Annexure "A"
- "PPSA" means the *Personal Property Securities Act 2009* (Cth) and Regulations.
- "Terms" means the terms and conditions set out in this document, and as amended from time to time.
- 1.2 References to the singular include the plural, and reference to a gender includes all other genders.
- 1.3 References to \$ or dollars are references to Australian dollars unless otherwise specified.
- 1.4 Reference to a person includes an individual, a firm, a corporation, a body corporate, a partnership, joint venture, an unincorporated body or association and any government agency.
- 1.5 Reference to a person includes a reference to the person's executors, administrators, successors, and assigns.
- 1.6 Reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it.
- 1.7 All headings are for reference purposes only and do not define, limit or in any way affect the meaning or interpretation of these Terms.
- 1.8 The word "include" (in all its parts, tense and variance) is not used as, nor is it intended to be interpreted as, a word of limitation, and does not limit what else is included.
- 1.9 If a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
- 1.10 Any indemnity given by a party:
- (a) is not the exclusive remedy of the party holding the benefit of the indemnity, which party may at its option, in addition or in the alternative, pursue remedies at common law, in equity or under statute;
 - (b) is a continuing indemnity;
 - (c) will not be affected by any matter unless the party benefiting from the indemnity agrees in writing; and
 - (d) includes legal costs and disbursements on a full indemnity basis.

2 APPLICATION OF THIS AGREEMENT

- 2.1 These Terms represent a "master agreement" and apply to all Orders and purchases of Products by the Customer. Each Order and any purchase of Products by the Customer from 3-DM are made under and subject to these Terms.
- 2.2 Subject to any variation under clause 22.1, the Contract will be on these Terms to the exclusion of all other terms and conditions (including, without limitation, all correspondence and discussions between the parties and any terms or conditions, if any, contained or purported to be contained in any purchase order or other documentation).
- 2.3 3-DM may revise these Terms at any time by giving notice to the Customer and the revised terms will be immediately effective for all Orders made after such notice has been given to the Customer.

3 ORDERS

- 3.1 Any order for Products made by the Customer to 3-DM shall be deemed to be an offer by the Customer to purchase Products made under these Terms.
- 3.2 3-DM will be deemed to have accepted an Order from the Customer when:
- (a) 3-DM confirms or accepts the Order in writing; or
 - (b) delivery of Products under the Order occurs,

whichever is the earlier.

- 3.3 Orders must be submitted to australia@3d-matrix.com.au and must contain such information as 3-DM specifies from time to time.
- 3.4 By making an Order, the Customer acknowledges that it has read, understood, and agreed to be bound by these Terms.
- 3.5 Once 3-DM accepts an Order as provided by clause 3.2, an individual contract for the supply and acceptance of Products incorporating all the Terms and binding between the parties shall be formed (**Contract**). A separate Contract is formed in relation to each Order.
- 3.6 The Order must include the following information:
- (a) name of the Customer and ABN;
 - (b) delivery address;
 - (c) requested delivery date (subject to clause 7);
 - (d) Product and Product code;
 - (e) quantity of each Product; and
 - (f) invoicing contact information and email.
- 3.7 3-DM may cancel the acceptance of any Order for Products at any time before delivery. The Customer may only cancel an Order with 3-DM's prior written consent.
- 3.8 If 3-DM advises the Customer that 3-DM will be unable to deliver the Products, then upon receipt of such notice by the Customer, the Contract will be terminated without 3-DM incurring any liability.

4 PRICE

- 4.1 Unless otherwise agreed in writing, Products will be invoiced in accordance with the current Price List. 3-DM may adjust its prices from time to time to reflect changes in costs, market conditions, or relevant factors. Customers will be notified with reasonable notice of any price adjustments before they take effect. Prices confirmed in accepted quotations or purchase order will remain firm for that order. All prices are stated exclusive of any applicable duties, charges, levies, fees and taxes.
- 4.2 GST:
- (a) all prices quoted or listed are exclusive of GST unless expressly indicated to the contrary.
 - (b) where a payment or consideration for the Products is not expressed to include GST, the Customer must pay, in addition to the payment or consideration expressed and without deduction or set off, an amount in respect of GST applicable to the supply by 3-DM to the Customer.
 - (c) payment of GST must be made at the same time as payment is due on the invoice for the Products.
 - (d) 3-DM must issue the Customer with a correctly rendered tax invoice for any amount collected on account of GST.

5 PAYMENT

- 5.1 Products will be invoiced upon acceptance of an Order by 3-DM or at any later time determined by 3-DM.
- 5.2 Payment of invoices issued by 3-DM is to be made by the Customer to 3-DM within thirty (30) days from the date of the invoice.
- 5.3 All payments shall be made by an electronic funds transfer (EFT) stating the Invoice number and the Customer's name.
- 5.4 All invoices are payable in Australian dollars unless a different currency is stated on the invoice.
- 5.5 Payment must be made to 3-DM in full, without set-off or deduction of any kind.
- 5.6 3-DM may withhold or cancel delivery of Products (whether or not an Order has been accepted) for non-payment of any amounts due and payable to 3-DM by the Customer or for a breach of these Terms by the Customer.
- 5.7 All payments payable to 3-DM under the Contract shall become due immediately upon termination of the Contract despite any other provision.
- 5.8 If the Customer fails to pay an amount on the due date, all amounts then owing to 3-DM immediately and automatically will become due and payable. The Customer will pay 3-DM interest on all overdue amounts calculated daily from the due date for payment at the rate which is 5% above the Reserve Bank of Australia's Cash Rate.

6 MINIMUM ORDER AND FREIGHT CHARGES

- 6.1 Unless otherwise agreed, a minimum order of five (5) units of PuraStat applies.
- 6.2 Orders below the minimum, or orders containing only Catheters and/or Applicators, will incur freight-in charges. 3-DM will advise applicable freight-in charges at the time of order.
- 6.3 3-DM reserves the right to amend the minimum order quantity or freight by notice or by specification in the Price List provided to the Customer from time to time.

7 DELIVERY

- 7.1 Delivery occurs when possession or control of the Products passes to the Customer, its agent or carrier.
- 7.2 The Products are stored at the warehouse or other location dedicated by 3-DM where they are available to the Customer.
- 7.3 Any dates specified by 3-DM for delivery of the Products are intended to be an estimate only. Time for delivery shall not be made of the essence.
- 7.4 The following indicative delivery times apply:

Order received	Dispatch and delivery time
Before 12pm*	Dispatch same day and delivery next day
After 12pm*	Dispatch next day and delivery following day
Urgent order*	Dispatch same day and delivery next day

*Note: for regional areas, delivery may take at least 2 days depending on the location

- 7.5 If the Customer requests urgent or express delivery, the Customer will be responsible for shipping/delivery costs. Such costs will be added to the invoice for Products and be payable at the same time. Upon request, estimated shipping/delivery costs will be provided at the time of order.
 - 7.6 3-DM will arrange delivery of Products to the delivery address stated in the Order. The Products shall be delivered by a carrier selected by 3-DM.
 - 7.7 3-DM may make partial deliveries and each such partial delivery shall be deemed to give rise to a separate Contract, with these Terms applying to each partial delivery.
 - 7.8 A receipt for Products signed on behalf of the Customer will be sufficient evidence of delivery.
 - 7.9 Upon delivery of Products, the Customer shall confirm the quantity and condition of the Products and packaging, and if requested, receipt of the relevant records including the Certificate of Analysis, Certificate of Conformance, and Acceptance of Manufactured Batch.
 - 7.10 The Customer must notify 3-DM within three (3) business days of delivery of any short-fall in or loss or damage to Products delivered or it will be deemed to have accepted the Products and cannot return the Products in accordance with clause 8.
- 8 PACKAGING, STORAGE, HANDLING AND USE OF GOODS**
- 8.1 Products will be packaged in accordance with 3-DM's standard packaging procedure in compliance with regulatory requirements.
 - 8.2 The Customer must handle and store Products in such a way that:
 - (a) identification of the Products is not lost;
 - (b) the Products are kept dry and do not contaminate, and are not contaminated by, other products or materials; and
 - (c) adequate precautions are taken against spillage, breakage, damage or theft.
 - 8.3 The Product expiry date or "use-by" date will be printed on the package of the Product in the format "YYYY.MM.DD" for PuraStat and "MM.YYYY" for PuraStat Nozzle System. The Customer shall not use any Products if their expiry date or "use by" date has passed.
 - 8.4 Before shipment of Products, 3-DM shall or procure its carrier to:
 - (a) perform a quality inspection of each shipment of Products;
 - (b) satisfy itself that the manufacture and quality of the Products have been managed properly; and
 - (c) verify delivery of the Products.
 - 8.5 3-DM and/or its carrier shall make and keep records of pre-shipment inspections, the Certificate of Analysis, Certificate of Conformance and acceptance of Manufactured Batch on or before delivery of Products and provide them upon request by the Customer.
 - 8.6 The Customer must store and handle the Products in accordance with the Product Specification, or other documentation or direction given by 3-DM.
 - 8.7 During delivery to the Customer, if applicable, 3-DM may use at its sole discretion a temperature indicator or data logger included in the packaging of Products to identify or record temperature conditions during shipment.
 - 8.8 During shipment/delivery of Products, the Customer must ensure the temperature data is transmitted electronically and without delay to 3-DM at australia@3d-matrix.com.au. In case any party becomes aware of a breach of the temperature conditions, it shall notify the other party immediately.
 - 8.9 The Customer acknowledges and agrees that:
 - (a) it has read and will comply with the Product Specification and any other documentation or direction of 3-DM concerning storage, handling and usage of the Products; and
 - (b) without limiting clause 8.9(a), the Product known as "PuraStat" shall and will be stored at all material times in accordance with the following instruction:
Keep dry and refrigerated between 2°C and 8°C.
 - 8.10 The Customer must ensure that all applicable health and safety laws and regulations and therapeutic goods requirements are observed and other appropriate steps taken in relation to the storage, handling, sale and the use of the Products once they are delivered to the Customer.
 - 8.11 The Customer is responsible for provision of and must provide safe facilities for the reception of Products into storage.
 - 8.12 The Customer must not make any statements and representations about the Products in any way contrary to any laws including any health and safety regulations and therapeutic goods requirements. Where the Customer supplies Products to any other person in the course of trading, the Customer must not give or make any undertaking, assertion or representation in relation to the Products without 3-DM's prior written approval.
 - 8.13 The Customer shall keep records of each Order and purchase and sale, showing the date of purchase or supply, the quantity received or supplied, the address of a supplier or purchaser, and the temperature in storage and during transportation, if applicable. Such records shall contain complete information on the purchase and supply/traceability of every Product and shall be made available to 3-DM upon request.

9 RETURNS

- 9.1 The Customer shall not return any Products to 3-DM unless 3-DM confirms acceptance of a request for such return in writing and provides a return note and any specific instructions for return of the Products. Any return note is valid for a period of thirty (30) calendar days only from the date of delivery of the Products to the Customer.
- 9.2 The Customer bears the risk and is responsible for all costs of delivery applicable to the return of the Products to 3-DM, unless 3-DM agrees that the Products are defective.
- 9.3 In the event the Customer returns non-defective Products, 3-DM reserves the right to charge a restocking fee on Products returned, at a rate of 20% of invoiced cost.

10 RISK AND TITLE

- 10.1 Risk of damage to or loss of the Products passes to the Customer at the time when the Products are made available or have been delivered to the Customer.
- 10.2 The Customer must insure all Products for their full value with a reputable insurer from the point at which risk passes to the Customer.
- 10.3 Title in the Products passes to the Customer when 3-DM has received (in cleared funds) the price for the Products in full together with any additional charges as set out in the relevant invoice and any interest due.

11 RECOVERY OF GOODS

- 11.1 Until title of the Products has passed to the Customer, the Customer must:
 - (a) hold the Products on behalf of 3-DM;
 - (b) store the Products (at no cost to 3-DM) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as 3-DM's property;
 - (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Products; and
 - (d) store the Products in accordance with the Product Specification and any other documentation or direction from 3-DM and keep the Products insured on 3-DM's behalf for their full price against all risks to the reasonable satisfaction of 3-DM. On request the Customer shall produce the policy of insurance to 3-DM.
- 11.2 Where payment is overdue in whole or in part for any of the Products, 3-DM or its nominee may (without prejudice to any of its other rights) enter the Customer's premises or any other place where the Products are stored by the Customer and recover or resell the Products without being liable for any loss or damage caused.
- 11.3 The Customer grants to 3-DM an irrevocable authority to enter the Customer's premises to recover the Products, provided that 3-DM may only recover and resell such quantity of the Products which is sufficient to pay all of the Customer's unpaid liabilities in respect of the Products and cost of resale.
- 11.4 The Customer may resell the Products before title has passed to it only on the following conditions:
 - (a) any sale shall be effected in the ordinary course of the Customer's business at arm's length; and
 - (b) any such sale shall be a sale of 3-DM's property on the Customer's own behalf and the Customer shall hold the proceeds on account for 3-DM.

12 PPSA

- 12.1 If 3-DM determines that the Contract is or contains a security interest for the purposes of the PPSA, the Customer agrees to do such things as required by 3-DM or necessary for the purposes of:
 - (a) ensuring that the security interest is enforceable, perfected and otherwise effective; or
 - (b) enabling 3-DM to apply for any registration, or give any notification, in connection with the security interest so that the security interest has the priority required by 3-DM; or
 - (c) enabling 3-DM to exercise rights in connection with the security interest.

13 PRODUCT COMPLAINTS AND RECALLS

- 13.1 The Customer shall notify 3-DM immediately and no later than within forty-eight (48) hours of any allegation, claim, complaint or issue relating to a Product, including the Product's quality, defects, malfunctioning, failure, deterioration in the characteristics and/or performance, or inaccuracies in the Product Specification and use, of which the Customer becomes aware.
- 13.2 The Customer shall assist 3-DM in resolving any complaints and claims and reporting any incidents or adverse effects from the use of a Product to appropriate authorities.
- 13.3 The Customer shall notify 3-DM immediately about any returns of Products relating to the Product's quality or performance and shall return such Products to 3-DM upon request. Such returns shall not be construed in any way to constitute any acceptance or acknowledgement of any liability by 3-DM.
- 13.4 In the event that any of the Products are subject to a recall, field safety alert or hazard alert by either 3-DM or any governmental agency or regulatory authority, the Customer must:
 - (a) immediately cease use and sale of affected Products and quarantine all affected stock;
 - (b) within 24 hours of request, provide complete traceability information (including UDI, lot/batch, quantities, and recipient details) and any other information reasonably required; and
 - (c) follow 3-DM's reasonable directions in relation to notifications, retrieval,

corrective actions, and returns.

Each party bears its own internal costs, except that costs caused or contributed to by a party's breach, negligence, or non-compliance are borne by that party.

14 REGULATORY COMPLIANCE

14.1 The Customer agrees to comply, and to ensure compliance with, all laws and regulations as applicable in Australia relating to the supply, post marketing surveillance/vigilance obligations and other regulatory requirements with respect to the Products.

14.2 The Customer shall maintain purchase and supply/traceability records for all Products for fifteen (15) years or longer if so required by laws and regulations and make those records available to 3-DM and regulatory authority upon request.

14.3 The Customer shall inform 3-DM as soon as it becomes aware of any of the following:

- (a) any defect in a Product or its presentation and/or any issue directly or indirectly related to the Product's use and/or safety;
- (b) any technical, statutory or other issue with respect to these Terms and the Contract.

14.4 Each party shall provide to the other party, upon request, such assistance and information as may be necessary or desirable to create, improve or preserve the most favourable regulatory environment in Australia or to communicate with the governmental agency or regulatory authority about actual or potential measures or decisions affecting the distribution of Products.

15 INDEMNITY

The Customer indemnifies 3-DM, its Affiliates, employees, officers, agents and contractors against any and all cost, expense, damage, judgment, liability or loss (including consequential loss, loss of profit and loss of expected profit) incurred directly or indirectly as a result of or in connection with any claim, demand or cause of action asserted or brought by a third party in relation to or arising from any negligent act or omission, unlawful conduct or other misconduct by the Customer, its officers, employees, agents and contractors relating to the Contract or the Products.

16 WARRANTIES AND LIMITATION OF LIABILITY

16.1 3-DM warrants that if any of the Products are therapeutic goods for the purposes of the *Therapeutic Goods Act 1989* (Cth), that such goods are registered, listed or included (as the case may be) on the Australian Register of Therapeutic Goods.

16.2 Nothing in this agreement shall be interpreted as an attempt to modify, limit or exclude terms or warranties which are imposed by statute (including but not limited to the *Competition and Consumer Act 2010* (Cth)) and which cannot be modified, limited or excluded.

16.3 Other than as specifically set out in these Terms, and to the extent permissible by law, all representations and warranties implied by statute or law are excluded.

16.4 To the extent permitted by law, the liability of 3-DM for breach of this agreement, Terms and Contract, for negligence or other tort and for breach of statutory duty, implied term or warranty about the Products sold, shall be limited, at the option of 3-DM, to:

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

16.5 To the extent permissible by law, 3-DM shall have no liability to the Customer for:

- (a) loss of profit or anticipated profit;
- (b) loss of revenue;
- (c) loss of savings on overheads;
- (d) loss arising from any breach of contract committed by the Customer, including but not limited to any contract for the re-supply of the Product by the Customer to a third party;
- (e) loss of goodwill;
- (f) loss arising from business interruption;
- (g) loss arising from or in connection with any contamination or pollution; and
- (h) exemplary damages.

16.6 The limitations and exclusions in this clause 16 also apply to loss incurred in respect of personal injury and loss arising from wilful acts and omissions.

16.7 Notwithstanding any other provision to the contrary and to the fullest extent permitted by law, the aggregate liability of 3-DM arising out of or in connection with this agreement or a Contract, whether in contract, tort (including negligence), statute or otherwise, is capped at the total amounts paid by the Customer to 3-DM for the Products giving rise to the claim in the 12 months preceding the event giving rise to the claim.

17 INTELLECTUAL PROPERTY

17.1 Nothing in these Terms conveys to the Customer any rights in any intellectual property of 3-DM or of its Affiliates in the Products or in any packaging or containers of the Products. The Customer's rights rest in contract only.

17.2 The Customer must not, during or after the term of a Contract:

- (a) sell any product being an unauthorised or counterfeited copy of Products or any work the intellectual property in which is owned by or licensed to 3-DM; or
- (b) use any trade mark or other intellectual property of 3-DM or its Affiliates to sell anything other than the Products.

17.3 The Customer must not remove, deface, alter or obscure any trade mark, trade name or logo applied to any Product and must not add any trade mark or branding to any Product without the prior written consent of 3-DM.

18 FORCE MAJEURE

The parties shall be excused for delays in performance or failure of performance (except payment of amounts due) to the extent arising from causes beyond such party's reasonable control, including without limitation, strikes, wars, fires, acts of terror or acts of God, such as floods and earthquakes. In the event of any such event or condition, the party whose performance is excused shall notify the other party as soon as practicable and shall make diligent efforts to perform its obligations at its earliest opportunity.

19 CONFIDENTIALITY

19.1 The Customer must not disclose confidential information of 3-DM to a third party (including making any statements or public announcements) without the prior written consent of 3-DM, except if the disclosure is:

- (a) legally compelled by a court or other authority of competent jurisdiction;
- (b) made to a legal adviser, patent attorney or other professional adviser on a strictly need-to-know basis and to whom a copy of these Terms is supplied;
- (c) made with the prior written consent of 3-DM, which may grant or withhold its consent in its absolute discretion.

20 PRIVACY AND HEALTH INFORMATION

20.1 Each party will comply with applicable privacy and health records laws in connection with any personal information or health information handled under or in connection with this agreement or a Contract, including the *Privacy Act 1988* (Cth) and the *Health Records Act 2001* (Vic).

20.2 The Customer must not disclose to 3-DM any personal information or health information unless there is a lawful basis for the disclosure. Where reasonably practicable, information provided for complaint, vigilance or recall purposes should be de-identified.

20.3 Where disclosure of identifiable information is necessary (for example, to meet vigilance or recall obligations), the Customer will ensure any required notices have been provided and consents obtained (if applicable), and will limit disclosure to what is reasonably necessary.

20.4 Each party will implement reasonable technical and organisational measures to protect such information against unauthorised access, modification or disclosure, and will use secure transfer methods specified by 3-DM for any sensitive health information.

20.5 Neither party will disclose personal information to any overseas recipient in connection with this agreement or a Contract unless permitted by law and subject to safeguards that ensure substantially similar protection to that provided under Australian privacy laws.

21 DISPUTE RESOLUTION

21.1 Nothing in this clause prevents a party seeking urgent injunctive or similar interim relief from a court.

21.2 If a dispute arises between the parties in connection with the Contract, the parties undertake in good faith to use all reasonable endeavours to settle the dispute by way of good faith negotiation.

22 GENERAL

22.1 These Terms may be varied only by agreement in writing signed by both parties.

22.2 The relationship between the parties is not one of exclusivity.

22.3 The Customer must comply and keep compliant with any laws and regulations relating to the use and supply of Products and performance of the Contract.

22.4 The Customer must not assign or novate the Contract without the prior written consent of 3-DM, which it may give or withhold in its absolute discretion.

22.5 Notices, consents and other communications in connection with the Contract must be in writing and hand-delivered, or sent by pre-paid post to the other party's representative identified in the Contract, or by sending it by e-mail to the e-mail address for the recipient which is set out in this document (or the e-mail address last notified by the recipient). Notices take effect as follows:

- (a) hand-delivery – at the time the delivery is made;
- (b) notices sent by pre-paid post – four business days after posting; and
- (c) e-mail – at the time sent, unless the sender is notified, by a system or person involved in the delivery of the email that the email was not successfully sent,

except that if the notice is deemed to be received on a day which is not a business day or after 5pm in the place to which the communication is sent, it is deemed to be received at 9am on the next business day.

22.6 A party will not be deemed to have waived any right or remedy or the performance by the Customer of any obligation under the Contract unless it has expressly done so in writing signed by a director or secretary.

- 22.7 Every phrase, sentence, paragraph and clause in these Terms is severable the one from the other despite the manner in which they may be linked together or grouped grammatically and if any phrase, sentence, paragraph or clause is found to be defective or unenforceable for any reason whatsoever the remaining phrases, sentences, paragraphs or clauses as the case may be, are of full force and effect.
- 22.8 3-DM may exercise a right, remedy or power in any way 3-DM considers appropriate. If 3-DM does not exercise a right, remedy or power at any time, this does not mean that 3-DM cannot exercise it later.
- 22.9 Any term of these Terms and the Contract survives the expiry, cancellation or termination of the Contract if required to give effect to it.
- 22.10 Nothing contained or implied in these Terms or the Contract will create a joint venture, partnership or principal and agency relationship between the parties and neither party will represent that it is a joint venturer, partner, employee, principal or agent of the other party and neither party will have power to bind or obligate the other party in any manner whatsoever.
- 22.11 The Contract and all Orders will be governed by and construed according to the laws of the state of Victoria, Australia. -The parties submit to the non-exclusive jurisdiction of the courts of that state.