

SEND

**CREDIT ACCOUNT APPLICATION**  
ICON SUPPLIES PTY LIMITED t/as ICON MEDICAL SUPPLIES ("the company")  
ABN 58 105 611 854

Business Name of Applicant..... ABN..... ("the customer")  
Company Name of Applicant..... ABN..... ("the customer")  
AHPRA Licence **MED/PHA ETC**.....  
Business Address.....  
Postal Address..... Phone.....  
Fax..... Mobile..... Email.....  
Account's Contact..... Account's Phone..... Account's Email.....

**DETAILS OF PROPRIETORS, DIRECTORS, PARTNERS**

1..... (full name)..... (private address)..... (date of birth)  
2..... (full name)..... (private address)..... (date of birth)  
3..... (full name)..... (private address)..... (date of birth)  
Bank Name..... Branch..... BSB No..... Account No.....

**Please attach a copy of Drivers Licence of each person listed above.**

**Please attach a copy of the current certificate of registration (for pharmaceuticals single or medical centre) or current licence issued by the pharmaceutical services branch (private hospital and day procedure centres only).**

**TRADE REFERENCES (2 MINIMUM)**

1..... (trading names)..... (phone)..... (fax)  
2..... (trading names)..... (phone)..... (fax)

I/We acknowledge receipt of the Terms and Conditions of the company that accompany this application. I/We agree that notwithstanding any other document, terms and conditions, and/or anything else except a written agreement signed by me/us and the company any sale and delivery of goods and services to me/us upon these Terms and Conditions and no other except for such terms as are implied by or under any law and which cannot be excluded.

I/We acknowledge that I/we will buy goods and services from the company and use them for commercial activity.

I/We undertake to notify the company in writing of any change in my/our structure or status.

I/We warrant that all financial and other information supplied by me/us to the company in support of this application for credit is accurate and acknowledge that it forms the basis of the company's consideration of the application and of any sale and delivery of goods and services which may be made to me/us on credit.

I/We acknowledge and specifically agree that the company may request a credit report on me/us to be given to it for the purpose of assessing this application by a credit reporting agency, bank or financial institution and such report may contain consumer credit information. I/We agree that a credit reporting agency, bank or financial institution may give a credit report on me/us to the company to enable the company to assess this application for credit. I/We further agree that the company may give information to a credit reporting agency, bank or financial institution on any default made by me/us.

I/We authorise the company and its associated companies to obtain personal and/or other confidential information about me/us from me/us or anyone else primarily for assessing my/our new application for a credit account, the subsequent administration and collection of the account. I/We agree and consent to the company, collecting, using, disclosing to the personnel of the company and others my/our information for these purpose and for credit control generally.

Executed by the Applicant Company )  
Pursuant to section 127(1) of the )  
Corporations Act 2001 )

**Dated the ..... day of ..... 2**

.....  
Signature of Authorised Person  
.....  
Name of Authorised Person  
.....  
Office Held  
.....  
Sole Trader Signature  
.....  
Partners Signature

.....  
Signature of Authorised Person  
.....  
Name of Authorised Person  
.....  
Office Held  
.....  
Partners Signature



# PERSONAL GUARANTEE

In consideration of the company at my/our request (which I/we hereby make) agreeing to supply and/or continue to supply goods and services to the customer and at my/our express request forbearing to sue for any monies now owing or in future may become owing to the company by the customer.

I/We .....

of (address) .....

and I/We .....

of (address) .....

("the Guarantor/s") hereby jointly and severally guarantee to the company the due and punctual payment of all monies owing or remaining unpaid to the company by the customers, as follows:

1. The guarantor/s will pay to the company on demand without deduction or set off, all monies then owing or from time to time remaining unpaid by the customer including without limitation all interest, administration, collection and legal costs of recovery of such monies, and the company need not first take recovery proceedings against the company.
2. This guarantee shall be a continuing guarantee to the company for the whole of the customer's indebtedness or liability to the company from time to time howsoever and whensoever arising and shall not be wholly or partially discharged by any payment in full of all monies due by the customer and it will not be affected by:
  - a) the company granting any time or other indulgence, compounding or comprising with or releasing the customer or any guarantor or co-surely;
  - b) the company taking or failing to take or enforcing or failing to enforce or holding any other security for the customer's indebtedness or varying or surrendering any such security;
  - c) any change in the identity or proprietorship of the customer
  - d) any failure to notify the guarantor/s of any dealings between the company and the customer including any variation in the amount of credit allowed to the customer or any failure to pay by the customer
  - e) the company obtaining judgment against the customer
3. The guarantor/s hereby indemnify the company from any loss the company may suffer by the reason of the customer becoming bankrupt or going into liquidation, or death, including any amount which may be paid to the company by the customer but required to be repaid to the trustee in bankruptcy or liquidator of the customer.
4. The guarantor/s undertake to the company that this guarantee will not be vitiated by any act of a third party including without limitation any Deed of Arrangement unless the company agrees in writing to such third party act and if this guarantee however ceases to be effective or is avoided then this guarantee shall be reinstated as a guarantee give immediately after it has become ineffective or avoided as if it was a fresh guarantee.
5. I/We acknowledge and specifically agree that the company may request a credit report on me/us and such report may contain consumer credit information to be given to it for the purpose of assessing this application by a credit reporting agency, bank or financial institution. I/We agree that a credit reporting agency, bank or financial institution may give a credit report on me/us to the company.
6. I/We authorise the company and its associated companies to obtain personal and/or other confidential information about me/us from me/us or anyone else primarily for assessing the customer's application for a credit account, the subsequent administration and collection of the account. I/We agree and consent to the company, collecting, using, disclosing to the personnel of the company and others my/our information for these purposes and for credit control generally.
7. The guarantor/s hereby charge in favour of the company as security for his/her/their obligations to the company. all right title and interest in any land held now by the guarantors alone or jointly with anyone else or acquired by the guarantor/s at any time hereafter. If the customer defaults in payment of any amount owed to the company, the guarantor/s specifically authorise the company to lodge a caveat against any dealings with any such property without prior demand for payment from the guarantors and hereby appoint the company my/our attorney for this purpose.
8. I/We confirm that we have obtained or had the opportunity to obtain independent legal advice from my/our solicitors and understand the nature of the guarantee and my/our obligations under this guarantee.

Dated the ..... day of ..... 2 .....

## SIGNED BY THE ABOVE NAMED GUARANTOR/S

..... Guarantor's Signature	..... Guarantor's Signature	..... Guarantor's Signature
..... Signature of Witness	..... Signature of Witness	..... Signature of Witness
..... Full Name of Witness	..... Full Name of Witness	..... Full Name of Witness
..... Address of Witness	..... Address of Witness	..... Address of Witness



## ICON TERMS AND CONDITIONS OF SALE

ANY TERMS AND CONDITIONS OF ANY PURCHASE ORDER OR ACKNOWLEDGMENT GIVEN OR RECEIVED WHICH ARE ADDITIONAL TO OR INCONSISTENT WITH THIS AGREEMENT SHALL HAVE NO EFFECT AND SUCH TERMS AND CONDITIONS ARE HEREBY EXCLUDED AND REJECTED.

### CONDITIONS OF CONTRACT

#### 1. GENERAL

- a) These conditions supersede all prior representations or arrangement and contain the entire agreement between the parties in connection with the products (unless otherwise expressed by ICON in writing). All other terms and conditions, express or implied, are excluded. None of ICON's employees or agents has authority to modify or supplement these conditions or to accept any order except on ICON's official invoices.
- b) Nothing in these conditions shall restrict the statutory rights of a buyer who deals as a consumer.
- c) References to the products include their packaging.
- d) If the Buyer places an order, accepts delivery of products, makes any payment and/or performs any of these terms, The Buyer has accepted all the terms and conditions in this agreement.

#### 2. PRICE AND GST

- a) All invoices are exclusive of GST, all other duties, excises, fees or taxes. The Buyer must pay to ICON an amount equal of any GST, duty, excise, fee, or tax. ICON must pay for any supply of the products under these terms and conditions of sale. The Buyer must pay the GST, duty, excise, fee or tax at the same time the Buyer pays the price pursuant to this agreement. All sums due to ICON shall be paid in Australian Legal Tender and must be paid into Commonwealth Bank Account Number: 10974155 BSB: 062-107 or to PO Box 6519 SILVERWATER NSW 2128 or such other payment information ICON may supply.
- b) Payment is due by the date and in accordance with the payment terms and instructions stated on ICON's statements but ICON at its own discretion may require security for payment before dispatch in some circumstances.
- c) ICON may cancel or suspend further delivery of products to the Buyer until full payment of all monies due from the buyer to ICON is completed and ICON may vary or withdraw credit at its own discretion.
- d) ICON may increase prices in accordance with increases in ICON's costs and/or general price list increases.
- e) In the circumstances described in clause 9(c), all unpaid balances owing to ICON from Buyer shall become a debt immediately due and payable to ICON, irrespective of whether property in the products have passed to Buyer or not.

#### 3. PAYMENT & FREIGHT CHARGES

- a) Products will be invoiced on dispatch. Time of payment is of the essence of the contract.
- b) The Buyer must pay all invoices in full (without set-off or deduction, including any claims for credit) within 30 days after invoice date.
- c) If the Buyer fails to pay an amount due:
  - i.) ICON will charge a fortnightly \$150.00 administration fee on any outstanding debt owed to ICON under the contract which is not paid to ICON on the due date, after as well before any judgement.
  - ii.) ICON may cancel or suspend further delivery of products to the Buyer until full payment of all monies due is paid; and
  - iii.) The Buyer must pay all expenses incurred by ICON in the recovery of overdue amounts.
- d) The Buyer may not withhold payment or make any set-off on any account.
- e) ICON may appropriate sums received from Buyer against any debt due to ICON (under this or any other contract), irrespective of any purported appropriation by the Buyer.
- f) All American Express transactions incur a 2% processing fee.
- g) Freight charges for Credit Accounts (form filled out with ICON):
  - i.) All SYDNEY/BRISBANE METRO orders under \$250 exclusive of GST are charged a \$10 delivery and handling charge.
  - ii.) All SYDNEY/BRISBANE METRO Cold Chain orders under \$500 exclusive of GST are charged a \$15 cold chain fee.
  - iii.) All MELBOURNE METRO orders under \$500 exclusive of GST are charged a \$15 delivery and handling charge.
  - iv.) All MELBOURNE METRO Cold Chain orders under \$1000 exclusive of GST are charged a \$15 cold chain fee.
- h) All NON-ACCOUNT, ONLINE ONLY CUSTOMERS (INTERNET SALES ONLY ACCOUNTS) orders are subject to freight and handling charges including back orders.
- i) All REGIONAL AREAS (OUTSIDE OF THE PREVIOUS METRO AREAS) receive a delivery fee, including back orders.
- j) All PICK UP ORDERS (AVAILABLE ONLY IN SYDNEY METRO) will incur a goods handling charge.
- k) Heavy, large or sensitive items (eg: autoclaves, furniture, fridges, bulky products etc) are subject to freight charges.

#### 4. ORDERS

Orders for catalogue or non-catalogue products which are not held as a stock line by ICON and which are ordered on the Buyers request must be for the relevant manufacturers minimum order quantity for that product.

#### 5. DELIVERY

- a) ICON endeavours to dispatch confirmed orders in 1-2 working days.
- b) Should the customer require a Same Day Dispatch for Urgent Order, they will be charged a \$40.00 surcharge.
- c) Delivery or dispatch dates quoted or requested, or dates when goods will be ready for shipment, are given or accepted by ICON in good faith but are not guaranteed and ICON is not liable to the Buyer for any loss or damage (including consequential loss or damage) arising from late delivery.
- d) Delivery shall be made to the place(s) specified on ICON's account information as supplied by the Buyer. Buyer is responsible for unloading. Buyers or its carriers receipt shall be conclusive evidence of delivery. The Buyer must still accept and pay for the products even if the delivery by ICON is delayed. Products will be delivered during ICON's normal business hours. If ICON agrees to deliver products outside these normal business hours, ICON may impose an additional delivery charge. The products will be delivered using methods and carriers selected by ICON. If the buyer requests other arrangements, the products will be transported at the Buyer's cost and risk where:
  - i.) the buyer does not take delivery when the products are ready; or
  - ii.) the buyer orders the product for collection and does not collect them within 5 business days after the specified collection date, ICON is entitled to store the products (or deliver them to one of the Buyer's addresses) without liability and at the Buyer's cost and risk.
- e) Subject to the clauses 3(c), 6(b) & 7, each delivery will be treated as a separate contract, and partial deliveries are permitted. Accordingly, failure to make any particular delivery, or any breach of contract by ICON relating thereto, shall not affect any remaining deliveries.
- f) ICON may deliver early where reasonable. Buyer shall be responsible for all storage, insurance and other costs relating to Buyer's failure to comply with the contract.
- g) Buyer must promptly supply all information and assistance required for ICON to execute Buyers order and if all relevant information is not readily supplied by the Buyer the delivery times quoted in the agreement do not apply.
- h) All deliveries outside the Sydney Metro Area are subject to freight and handling charges.
- i) All NON-ACCOUNT CUSTOMERS/ONLINE ONLY CUSTOMERS (INTERNET SALES ONLY ACCOUNTS) orders are subject to freight and handling charges, including back orders.

#### 6. ICON'S WARRANTY

- a) ICON warrants that upon delivery the products
  - i.) are sold with good title; and
  - ii.) comply with ICON's current published catalogue data (or, where there are none, are made with sound materials and workmanship to normal standards accepted in the industry), in all material respects (ICON's Warranty). ICON does not warrant that the products are of satisfactory quality or fit for any particular purpose of or intended use by Buyer, and it is for Buyer to satisfy itself that the products are so fit.
- b) ICON's Warranty is given on the condition that any instructions of ICON or the manufacturer, relating to the products, are strictly complied with.
- c) Buyer shall examine the products as soon as reasonably practicable after delivery. Buyer shall within 5 working days notify ICON of any incomplete or failed delivery, loss or damage during carriage or if the products fail to comply with ICON's warranty. Unless Buyer so notifies ICON the next working day after the date when Buyer became or ought reasonably to have become aware of any of the above and in any event before the earlier of 5 working days Buyer shall be treated as having waived all claims connected with the matter, which should have been notified.
- d) Products being returned must comply with the following conditions:
  - i.) They must be returned using a carrier nominated by ICON.
  - ii.) They must be unopened, in their unit of measure and in their original manufacturers packaging which has not been marked, defaced, damaged or interfered with in any way.
- e) The Buyer acknowledges that the following products cannot be returned under any circumstances: Any "cold chain" products which are required to be stored between 2 and 8 degrees Celsius, vaccines, or any nutritional products, seconds, special order stock remainder stock or samples or good sold as obsolete or substandard.
- f) ICON does not exclude any liability which cannot be excluded as between Buyer and ICON under any NSW or Australian Legislation.
- g) ICON will use reasonable endeavours to enforce, at the cost and for the benefit of the Buyer, any product warranties, guarantees and representations made to ICON by manufacturers and suppliers of products sold by ICON to the Buyer.
- h) ICON does not represent or warrant that any product (including, in particular, any imported product) does not infringe any intellectual property rights (including those protected by an Australian registered patent) of any third party.

#### 7. COMPLIANCE WITH LAWS, REQUIREMENTS AND GUIDELINES

- a) The Buyer must hold all necessary licenses and comply with all laws, product manufacturer requirements relating to the purchase, storage, sale, marking or use of the products, including compliance with all relevant adverse event reporting requirements, Therapeutic Goods Administration regulations and guidelines and information issued by product manufacturers from time to time and industry practices.
- b) If the Buyer is directed by ICON or the Therapeutic Goods Administration or a health authority, to assist in any suspension of supply or recall of products for any reason, the Buyer will cooperate and comply with all such reasonable directions to ensure the most effective response to the suspension or recall, to the extent that ICON is entitled to recover the costs of the suspension or recall from the relevant product manufacturer or supplier. ICON will reimburse the Buyer and reasonable and necessary costs incurred by the Buyer in connection with the suspension or recall in the same proportion.

#### 8. FORCE MAJEURE

- a) ICON shall not be liable for any failure to comply with the contract related to any circumstances whatever (whether or not involving ICON's negligence) which are beyond ICON's reasonable control and which prevent or restrict ICON from complying with the contract (including, but not limited to a failure of a government or relevant authority to grant or to delay in the grant of, any licence(s) required for the export of the products to or from Australia)
- b) ICON may where reasonable in all circumstances (whether or not involving ICON's negligence) without liability suspend or terminate (in whole or part) its obligation under the contract, if ICON's ability to manufacture, supply, deliver or acquire materials for the production of the products by ICON's normal means is materially impaired.

## 9. TERMINATION AND SUSPENSION

- a) The Buyer may not cancel any order once lodged with ICON, unless ICON in its absolute discretion, agrees otherwise in writing and the Buyer compensates ICON against all loss and/or damage arising from the cancellation.
- b) ICON may (without prejudice to its other rights or remedies) terminate or suspend ICON's performance of the whole or any outstanding part of the contract in the circumstances described in clauses 8 and 9(c). ICON may also suspend deliveries while investigating any claim relating to prior shipments (under any contract) of products.
- c) The relevant circumstances are if:
  - i.) Buyer fails to take delivery of the products as required under this contract or fails to pay for the products by the due date or breaches any other term of the contract: or
  - ii.) Buyer becomes bankrupt or insolvent or if a receiver or encumbrancer takes possession of any material part of Buyers assets. Or Buyer suffers any foreign equivalent of the foregoing: or
  - iii.) ICON has reasonable grounds for suspecting that an event in clause 9(c)(ii) has occurred or will occur, or that the Buyer will not pay for the products on the due date, and so notifies the buyer.
- d) In addition, ICON has the right, by notifying the Buyer, to suspend deliveries under this and/or any other contract ICON may have with Buyer (even though Buyer is not in arrears with any payment) if ICON considers that the amount outstanding in the account of the Buyer (whether actually due for payment or not) has reached the limit to which ICON is not prepared to allow credit to the Buyer, whether or not such a limit has been notified to the Buyer.
- e) If any of the events in this clause occur, the Buyer must indemnify ICON for any costs and expenses incurred prior to cancellation and must pay any reasonable cancellation charges fixed by ICON. In these circumstances, ICON may require the Buyer to provide prepayments or other security as a condition of ICON resuming supply of products to the Buyer.
- f) The Buyer has no claim against ICON for any damages, losses, costs or expenses arising from cancellation by ICON.

## 10. RISK AND TITLE

- a) Risk in the products shall pass to Buyer upon delivery to the Buyer, its carrier or Agent.
- b) However, ICON shall retain ownership, title and property in the products until
  - i.) ICON has received, from the Buyer, complete payment for the products or products or
  - ii.) Buyer mixes or processes the products so that they lose their identity or are irrecoverably incorporated in or mixed with other goods, or
  - iii.) Buyer sells them at arm's length in good faith to an unrelated third party.
- c) For the avoidance of any doubt, the Buyer agrees the resulting product ("the Downstream Product") shall be ICON's property until any of the conditions in clauses 10(b)(i),(ii) or (iii) have been satisfied.
- d) Until Ownership of the products or Downstream Products passes to Buyer,
  - i.) The Buyer must hold the product as fiduciary and bailer for ICON and store the product properly and separately as to be identifiable as the property of ICON; the Buyer must fully insure the product against all usual risks to full replacement value, against loss or damage, ensuring that ICON's interest as owner's is noted on the policy;
  - ii.) if the Buyer does not pay an invoice by the due date, ICON is entitled to enter any premises occupied by the Buyer and repossess the product
  - iii.) the Buyer may only sell the product as fiduciary (but not agent) of ICON, in the ordinary course of the Buyer's business and must:
    - 01) hold all proceeds separately in trust for ICON and account to ICON for the proceeds; and
    - 02) assign to ICON any book debt or claim against the third party acquirer of the product for the proceeds

## 11. INTELLECTUAL PROPERTY; AND THIRD PARTY CLAIMS

- a) Buyer must not use any trademarks or trade names applied to or used by ICON in relation to the products in any manner not approved by ICON.
- b) Buyer will indemnify ICON against any liability incurred by ICON.
  - i.) As a result of incorporating property of Buyer in the products or applying any trademark, trade name or design to the products, on Buyer's
  - ii.) In relation to any third party claims arising from the use made of or dealings by Buyer in the products (irrespective of whether they involve the negligence of ICON, its agents or employees).

## 12. ADVISE AND ASSISTANCE

ICON shall not be liable in contract, tort or otherwise, and irrespective of the negligence of ICON, its agent or employees for any representations, advice or assistance given (under this contract or otherwise, and whether before or after the date of the contract) by or on behalf of ICON in connection with the products or the contract, unless and then only to the extent that ICON has made such representation, and/or agreed to provide such advice or assistance for a fee under a separate written contract with Buyer. The Buyer acknowledges and agrees that it is responsible for advising its customers or patients about the operation, application, appropriateness, and use of the products.

## 13. LIMITATION OF LIABILITY

- a) Without prejudice to any other limitation of ICON's liability (whether effective or not):
  - i.) In no circumstance whatsoever can ICON be liable (in contract, tort or otherwise, and irrespective of any negligence or other act, default or omission of ICON or its employees or agents) for any indirect or consequential losses (including loss of goodwill, business or anticipated savings). Loss of profits or use, or any third party claims, in connection with the products or the contract.
  - ii.) Implied warranties and conditions as to the quality or fitness of the products or as to the accuracy of information, advice or other services concerning the products are expressly excluded to the maximum extent allowed by law.
- b) ICON's liability for a breach of this document or for a breach of any implied warranty or condition is limited to, at ICON's election:
  - i.) replacing the products (or supplying equivalent products); or
  - ii.) reimbursing the cost of or replacing the products (or supplying equivalent products)
- c) ICON's warranty and Buyers remedies are in substitution for any other warranties, obligations, representations, liabilities, terms or conditions (whether they are expressed or implied, or arise in contract, tort, or otherwise, and irrespective of the negligence of ICON, its employees or agents) in connection with the products (including without limitation, any relating to satisfactory quality, fitness for purpose, conformity with description or sample, care and skill or compliance with representations, but excluding implied statutory warranties relating to title), and all such warranties, obligations, representations liabilities, terms of condition are hereby expressly excluded.
- d) The Buyer indemnifies ICON for all liabilities, losses, damages, costs or expenses suffered or incurred by ICON as a result of the Buyer
  - i.) cancelling any order or part of any order
  - ii.) unloading, storing or handling the products
  - iii.) failing to comply with any manufacturer instructions regarding the products or with any laws relating to the storage, handling, sale, marking or use of the products
  - iv.) making, or allowing to be made, any statement in respect of the operation, application, appropriateness and use of the products; or
  - v.) breaching any of the Buyer's obligations under these terms and conditions of sale.
- e) ICON, its employees and agents shall not be liable for any loss or damage (including consequential loss or damage) of any kind whatever, even if due to the negligence of ICON, its employees or agents.
- f) This clause applies not withstanding any fundamental breach or breach of a fundamental term of the contract by ICON.

## 14. HEALTH AND SAFETY

- a) The Buyer must ensure that all products are safely and lawfully received, stored, maintained, used or applied.
- b) The Buyer must ensure that all appropriate safety information is distributed to its customers and all others (including Buyers employees) who require it for the safe handling or use of the products.

## 15. GENERAL

- a) The contract may not be assigned by the Buyer without ICON's prior written consent.
- b) No conduct of ICON (including a failure to exercise, or delay in exercising, a right) operates as a waiver of a right of ICON or otherwise prejudices or prevents the exercise of a right of ICON.
- c) The Buyer may only assign, dispose of or otherwise create an interest in its rights under these terms and conditions of sale with the consent of ICON. ICON may assign its rights under these terms and conditions of sale without the consent of the Buyer.
- d) Any provision of these terms and conditions of sale which is unenforceable or partly unenforceable is where possible, to be severed to the extent necessary to make these terms and conditions of sale enforceable, unless this would materially change the intended effect of this document.
- e) No failure by ICON to enforce any provision of this contract shall be construed as a release of its rights relating thereto or to sanction any further breach.

## 16. LAW

This contract shall be governed by and construed in accordance with the law of NSW. These terms and conditions of sale are governed by the law in force in New South Wales. The Buyer hereby agrees, for ICON's exclusive benefit, that NSW courts have sole jurisdiction to hear all claims or proceedings connected with the products or the contract. ICON may nevertheless bring claims in any other courts of competent jurisdiction.

## 17. MARKETING

ICON will provide the Buyer with marketing material which will be sent via fax and email with options to opt out of the marketing at any given time.

